1951.

File No. S. Bij. 2/51

K Examined

Legal DEPARTMENT

E BRANCH

Subject:— Suits Bijapur.

In the Court of the Civil Judge (S.D.) Bijapur

Civil Suit No. 690 of 1950.

Shivaraya Rayappa Devoor — Plff.

Vs.

The State of Bombay & 6 others Defts.

D.S. - (E)(K)

5 Bij. 2/51.

File No.

Std. Scott. Slip 24-B

CONTENTS.

Legal Department File No. S. Bij. 2/57

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Suits Bijapur.

C.S.No. 690 of 1950.

S. R. Devoor.

V/s

The State of B'bay & 6 others.

For a declaration of the invalidity of the various alienations in respect of suit property and for possession.

1-134.

Report under Rules 118 of Law Officers' Rules.

1 - 5

1) The number of the Suit. 690/1950

2i) The date on which, and the court in which, it was instituted. Date is 9-6-1950. In the Court of Sr.Civil - Judge, at Bijapur.

iii) The names of all the parties. 1)Shivaraya, Rayappa, Devur of Honnutgi-Plaintif
Vs.
1) The Bombay Province.
2) Parvatewwa w/o Honnappa Walikar of Honnutgi, taluka Bijapur.
3) Yellawa w/o Kallappa Pujari of Averi, taluka Bijapur.
4) Kashibai widow of Rayappa Devur of Honutgi, now residing at Bijapur, taluka Bijapur.
5) Madiwalappa, Shivappa Bisnal of Honnutgi, taluka Bijapur.
6) Channappa, Shivappa Bisnal of Honnutgi, taluka Bijapur.
7) Gurappa Shivappa Bisnal of Honnutgi -do-
-Defendants.

v) The amount or value of the claim. Rs.237-8-0 for the purpose of court-fee and Rs.2000/- for the purpose of jurisdiction of pleader's fee.

v) The date fixed by the court for the first hearing. 28-8-50.

vi) Whether notice of the action has been given under Sec.80 of the Civil Procedure Code, and, if so, the date of delivery of such notice. The notice dated 6-2-50 received on 12-2-50 by Registered post.

2) (a) A copy of the plaint in the regional language, together with copies of any documents or list of documents annexed to the plaint. Copy with the plaint is annexed herewith No documents are annexed with the plaint

(b) A translation of the same in English, typed in half margin, the more important of the statements therein being distinctly marked with letters(a)(b) etc. and note being added in the margin stating whether such statements are correct or not, and if not, in what respect they are inacurate, (when the requisite explanation cannot be thus compressed, reference should be made to the paragraph of the accompanying statement in which the matter should be fully discussed).

(i) Translation of the Tagai bond i.e. Form No.I. original is at page 17.
(ii) Application of Parwatevva, Yellava, is in English at page -95.
(iii) Tagai Form No.III is at page 181
(iv) History of the case which gives a clear idea of the proceedings (in English at p-183).
(v) The contention of the plaintiff as putforth before the Revenue Office is at page 201.

(c) A full and detailed statement:-

1) of the circumstances which led to the suit. One Shri Rayappa, was the owner of S.No. 269 of Honnutgi. His widow Bhimabai succeeded him. The said Kasibai passed a deed on 9-1-1931 in favour of her daughters - defendents No.2 and 3. The said Kasibai again sold the property on 20-6-1931 in favour of defendent No.5. The said defendent No.5 sold the property to defendent No.6 on 7-6-1935.

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The daughters of defendent No.3 brought a suit No.434 of 1935 for a declaration that the sale in favour of defendents Nos.5 & 6 ~~in this~~ x is null and void. The court passed the decree declaring the said sale in favour of defendents Nos. 5 & 6 null and void. So, defendents Nos. 5 & 6 had no interest in S.No.269 of Honnutgi.

After the decree against defendent No.6, defendent No.6 applied for a tagai loan on 14-3-38. The daughters of defendents Nos. 2 and 3 objected the said tagai loan being given to defendent No.6. Inspite of this objection, tagai loan was granted to defendent No.6. The defendent No.6 made default and so the land was forfeited on 15-7-45. Hence there was no title in defendent No.6 when the forfeiture order was made.

Plaintiff is the adopted son of Bayappa, the original holder of S.No.269 and hence the legal heir. The order of forfeiture is not ~~binding~~ binding on him. So, he is likely to succeed in the suit. The Govt. cannot succe even on the principle of estoppel as the loan was granted in spite of the objections made by the defendents Nos.2 and 3.

(ii)Of course which it is proposed to adopt,namely, whether to admit,compromise or defend the suit, and of the reasons for the same, and

It is better to admit and compromise the matter.

(iii) If it is proposed to defend the suit, of the grounds on which it is proposed to base the defence, and of the evidence to be adduced

No grounds to defend the suit.

d) If the case turns on documentary evidence,copies of the documents(or the originals) relied on by the plaintiff(if procurable) and by the defence.

Plaintiff has not filed any documents with the plaint. The documents which go to show the Govt. has no case are encumbered in B of clause 2 of this report.

e) All the correspondence and written proceedings,whether in English or in any regional language,connected with the subject matter of the suit together with translations in English of all important papers, which are in the regional language.

The documents and the translations are herewith sent.

f) A statement in English,containing a brief desirciption of all the documents referred to in clause(d) & (e) above which are in the regional language.

For Collector, Bijapur.

5 7

Civil Suit No. 690 of 1960.

In the court of the Civil Judge, Senior Division,
At Bijapur.

1. Shivaraya Rayappa Devur, caste Kurbar,
age 30, occupation agriculture
residence Benakanhalli, taluka Indi. ) Plaintiff.

Vs.

1. The Bombay Province (State).
2. Parvatewwa wife of Honnappa Walikar,
caste Kurbar, age 40, occupation
household work, residence Honnutagi,
taluka Bijapur.
3. Mellawa W/o Kallappa Pujari, caste Kurbar,
age 35, occupation household work
residence Averi, taluka Bijapur.
4. Kashibai widow of Rayappa Devur, age 55,
caste Kurbar, occupation household work
Residence Bijapur District Bijapur.
5. Madivalappa Shivagowda Bilgi, caste
Lingayat, age 35, occupation agriculture
Residence Honnutagi, taluka Bijapur.
6. Channappa Shivappa Bisnal, caste Lingayat,
age 43, occupation agriculture
residence Honnutagi, taluka Bijapur.
7. Gurappa Shivappa Bisnal, caste Lingayat,
age 35, occupation agriculture
residence Honnutagi, taluka Bijapur.... Defendant

---

Claim Rs. 237-8-0.

Herein the above named plaintiff begs to submit as under:--

(1) Rayappa Gatteppa Devur, the deceased husband of Kashibai, defendant No. 4, owned a house and also a land R.S.No. 269 measuring 21 acres, 20 gunthas, assessed at Rs. 6 of Honnutagi taluka Bijapur. He died in the year 1930 from Cholera. He died within a few hours after he was attacked by cholera. P.K. -23

(2) The deceased Rayappa left behind him his widow Kashibai, defendant No. 4 and two daughters Parvatewa and Yellawa who are defendants Nos. 2 and 3. They are his daughters by another wife who pre-deceased him. After his death, Kashibai, his widow, became his heir and her name was entered in the Record of Rights as her the Kabjedar. She got the widow's estate from her husband.

(3) Kashibai, defendant No. 4, passed a so called surrender deed (Walki Patra) in favour of Parvatewa and Yellawa, defendants Nos. 2 and, 3, of the said land revision S.No. 269 of Honnutgi. The deed is dated 2-1-1931 and it was registered on the same day. But the recitals in this deed that Rayappa the deceased husband of Kashibai had at the time of his death expressed his desire before some four panchas that his moveable and immoveable property should goto his two daughters is false and that he prohibited Kashibai from adopting any one is also false." Though Kashibai passed the socalled surrender deed, she reserved the right to enjoy the income from the land till her death. Kashibai had not surrendered her right, title and interest in the house which she also inherited from her deceased husband. There was a partial surrender about the land in question. This surrender was brought about through the undue influence and fraud of Honnappa the husband of defendant No. 2 Parvatewa.

(4). Kashibai, defendant No. 4, thereafter agreed a sale deed on 20-6-1934 in favour of one Shivagouda,

the deceased father of Madivalappa, defendant No. 5, of R.S.No. 269 of Honnutgi for and alleged debt due on a bond passed by the deceased husband of Kashibai, defendant No.4

(5). Shivagonda, the deceased father of Madivalappa, and Madivalappa, together passed a sale deed of the suit land to Channappa Bisnal, defendant No. 6, for Rs.300. The sale deed is dated 7-6-1935.

690-1950

(6) Parvatewa and Yellawa, defendants 2 and 3, the daughters of the deceased Rayappa Satappa Devur, brought a civil suit in the court of the joint Sub Judge at Bijapur in civil suit No. 434 of 1935 against Shivagouda Channama-llappa Honnutagi, the father of defendant No. 5, Channappa Shivappa Bisnal defendant No. 6 and Kashibai Kom Rayappa Devur defendant No.4 for a declaration that they -Parvatewa and Yellawa - are the owners of R.S.No.269 of Honnutagi and that the alienations in respect thereof which took place in the years 1934 and 1935 are not binding upon them. In the suit the court ordered as under:-

"It is hereby declared that the plaintiffs(Parvatewa and Yellawa) are the owners of the suit land R.S.No.269 of Honnutagi and the alienation in respect of that land in favour of defendants Nos. 1 and 2 (in that suit) i.e. Shivagouda Channamallappa Bilgi and Channappa Shivappa Bisna both of Honnutagi, are not binding upon the plaintiffs". The order is dated 4-1-1937. In this suit the court gave a finding that the deed of Hakki Patra dated 9-1-1931 passed by Kashibai, defendant No. 3 in that suit, in favour of Parvatewa and Yellawa, the then plaintiffs in the suit, was inoperative as a surrender but was legal and valid as a gift and hence the declaration as above was made by the Court.

(7) After this declaration was made by the court in civil suit No. 434 of 1935, Channappa Shivappa Bisnal made an application to the District Deputy Collector, Bijapur

Division, under the Land Improvements Loans Act for a Tagai loan sum of Rs. 200/- for erecting a tund in R.S.No. 269 of Honnutagi. This application is dated 14-3-1938. Along with his application the said Channappa had produced an extract from the Record of Rights. In the column of other rights, the names of Parvatewa and Yellawa were mentioned. Inspite of this, it appears the village Kul Kulkarni and theCircle Inspector recommended to the Prant Officer, Bijapur Divisdon, to grant a loan to the applicant onthe sucurity of th. land to be improved viz: R.S.No. 269 of Honnutgi. It appears that the District Deputy Collector sanctioned the loan of Rs. 200/- in the month of March 1938. Parvatewa and Yellawa immediately made an application to the Mamlatdar stating that they are the owners of R.S. No. 269 of Honnutri and that they had filed a Civil Suit in the Bijapur Sub Judge's Court against Shivagouda Chanm-Chanmallappa Bilgi, Channappa Shivappa Bisnal and Kanawa their step mother, in Civil Suit No. 434 of 1936 and had obtained a declaration that they are owners of the land a and that the alienation is null and void, So they pra ed that Tagai loan should not be sanctioned. Inspite of this application the Mamlatdar of Bijapur advanced Rs.150/- to the said Channappa on the security of the suit S.No. 269 of Honnutgi.

Then a few days thereafter in the month of April 1938, Parvatewa and Yellawa, defendants Nos. 2 and 3, made an application to the District Deputy Collector, Bijapur Division, not to grant a loan to Channappa Shivappa Bisnal as he was not the owner of the land. They have also produced a certified copy of the decree in Civil suit No. 434 of 1935 along with that application. It is not known what orders were passed on that application.

(8) Channappa Bisnal made default in payment of instalments. The District Deputy Collector, Bijapur Division, ordered forfeiture of the suit land after notice

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to the parties then interested in the land.

(9) Parvatewa and Yellawa, defendants Nos. 2 and 3, after receipt of forfeiture notice, contended that they were owners of the land and hence their right, title and interest in the land were not affected by the forfeiture order. The property was forfeited to Government on 15-7-1945.

(10) Kashibai, defendant No. 4, the widow of the deceased Nayappa Devur of Honnutagi, adopted the present plaintiff Shivaraya to her deceased husband at Bijapur in Shri Shidheshwar temple on 29-6-1947. The ceremony of giving and taking has taken place according to Hindu Law and also according to the custom of the caste. A photo was taken of the adoption ceremony. Kashibai (defendant No.4) has also passed an adoption deed on the same day and it was registered on the same day. Hence he has become the owner of all the moveable and immoveable property of the deceased Nayappa. The deceased Nayappa owned one house at Honnutagi and also R.S.No. 269 of Honnutagi, taluka and District Bijapur. The house is now in the possession of the present plaintiff Shivaraya. Plaintiff is also entitled to the present possession of R.S.No. 269 as owner.

90
1950

(11) The alienation of R.S.No. 269 of Honnutagi made by Kashibai, the adoptive mother of the present plaintiff in favour of her step-daughters Parvatewa and Yellawa, by a deed of Malki Patra dated 9-1-1931 which was construed by the Civil Court as a deed of gift in civil suit No. 434/1935 is not binding on the present plaintiff. As against him it is null and void. As the widow Kashibai had no saleable interest in R.S.No. 269 of Honnutagi after the Malki Patra was passed in favour of her step-daughters Parvatewa and Yellawa, the subsequent alienation made by her in favour of Shivagouda Chanmallappa Bilgi by a deed of sale dated 20-6-1934 is also null and void. This sale and the subsequent sale by Shivangouda in favour of Channappa Shivappa Bisnal are not binding upon the plaintiff.

(12) Government forfeited the land R.S.No.269 of Honnutagi for arrears of tagai taken by Shivappa Bisnal (defendant No. 6) who had no interest in the land at the time when the loan was sanctioned nor at any time. The gift deed (Hakki Patra) in favour of Parvatewa and Yellawa defendants Nos. 2 and 3 is not binding on the plaintiff, he is entitled to the present possession of the land as owner.

(13) The cause of action arose on the day on which the plaintiff was adopted by Kashibai to her deceased husband i.e. on 22-5-1947.

(14) The land in dispute is situated at Honnutagi, and the defendants reside and the cause of action has also arisen within the jurisdiction of the court of the Civil Judge, Senior Division, Bijapur and hence this court has jurisdiction to entertain the suit.

(15) As the plaintiff is the adopted son of Rayappa Satappa Devur of Honnutagi, he files this suit for a declaration that the surrender deed passed by his adoptive mother Kashibai in favour of her step-daughters Parvatewa and Yellawa dated 9-1-1931 and the sale deed passed by Kashibai in favour of Shivagouda dated 20-6-1934 and the subsequent sale by Shivagouda and his son in favour of Channappa Shivappa Bisnal are null and void as against the plaintiff and further that the hypothecation of the suit land by Channappa Bisnal in favour of the Government of Bombay and the order of forfeiture made by the District Deputy Collector, Bijapur Division, against Channappa and others, are not binding upon the plaintiff and also for possession of the land R.S.No.269 of Honnutagi.

(16) It is now learnt that Gurappa Shivappa Bisnal (defendant No. 7) who is the brother of Channappa Shivappa Bisnal (defendant No. 6), has made an application to the Collector of Bijapur in the year 1947 to cancel the forfeiture order regarding the land in question and he has produced

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before the Mamlatdar, taluka Bijapur, the arrears due together with interest. The proceedings are going on in that connection. So, he also is made a party to the suit.

(17) As the suit is for a declaration that the alienations and the forfeiture orders are not binding on the plaintiff the property is valued at Rs. 200 and court fee is paid on that amount and also as the suit is for possession of the suit land and the property is valued at 7½ times the assessment viz. Rs. 5/- which comes to Rs. 37½. The court fee is paid on that amount of Rs. 237-8-0. For the purposes of jurisdiction and pleader's fee the property is valued at Rs. 2000/-.

690/1950

(18) Notice under Section 80 of the Civil Procedure Code is given to the Bombay Province.

(19) The plaintiff prays that the court be pleased to declare:-

(a) The alienation made by Kashibai (defendant No.4) of R.S.No. 209 of Honnutagi, taluka and District Bijapur in favour of defendants Nos. 2 and 3 by the surrender deed dated 9-1-1931 is null and void and not binding upon the plaintiff and the alienation made by defendant No. 4 in favour of the father of defendant No. 6 by a sale deed dated 20-6-1934 and the subsequent sale deed passed by defendant No. 6 and his deceased father Chivagouda in favour of defendant No. 6 is also null and void and not binding upon the plaintiff.

(b) That the legal loan by defendant No. 6 by the hypothication of the suit land to Government is not binding upon the plaintiff.

(c) To declare that the forfeiture order passed by the District Deputy-Collector, Bijapur

Division, is not binding upon the plaintiff and for a declaration that the arrears of tagai loan are not binding upon the plaintiff.

(d) To award possession of the land S.No.209 of Honnutagi, taluka and District Bijapur.

(e) To award future mesne profits from the date of suit till possession is recovered from the defendants or from responsible defendants.

(f) To award costs of the suit to the plaintiff from the defendants.

(g) To award such other relief as the plaintiff is entitled to.

Bijapur.
Dated: 9/6/50

Plaintiff.

Herein I, the plaintiff, Shivaraya Rayappa Devur of Honnutagi now residing at Benakanhalli, taluka Indi, solemnly affirm that what is stated in paras 1 to 19 is known to me through documents and information received and personal knowledge and I believe the same to be true and I affix my thumb impression.

Bijapur. Translated and explained in Kannad.
Dated:-

Plaintiff.

Filed in court on 10/6/50

Pleader for the plaintiff.

PRESENTED on 10-6-50

Clerk of the Court

13

No. 595 of 1950.
Date:- 1-9-50

1

To

The Remembrancer of Legal Affairs,
Bombay Castle, Bombay No.1.

L. D.
6 SEP 1950

Subject:- Bijapur C.S.No.690/1950.
1. S.R.Devur.— plff.
Vs.
1. The Bombay Province
& others. defts.

Sir,

With reference to your No. 11566 dated 14-8-1950 I have the honour to state the above suit was fixed for filing W.S. on 28-8-1950. On that I applied for time and the court adjourned the suit to 27-9-50 for filing W.S. on behalf of the Province of Bombay. I therefore request your honour to sanction the defence of the suit early.

Yours faithfully

Dist.Govt.Pleader,Bijapur.

THE SECRETARY TO GOVERNMENT
LEGAL DEPARTMENT
File No.
Diary No. 16643
Dated 7-9-50.

No. 13288

Office of the
Remembrancer of Legal Affairs,
Bombay Castle, (Bombay No.1) 19th September 1950.

Subject:- Bijapur C.S. 690 of 1950.

MEMORANDUM.

With reference to his letter No. 595 dated the 1st September 1950 on the above subject, attention of the District Government Pleader Bijapur is invited to this ~~office~~ Office Circular No. 11629 dated the 16th August 1950 and he is requested to apply to the Court for a long adjournment.

Drafted for sign
AR
18/9 AAS

For Remembrancer of Legal Affairs.

To

The District Government Pleader,
Bijapur.

Issued
18/9.

JLD 18.9.50.

No. 120 of 1951.
Date:- 16-2-1951

To

The Remembrancer of Legal Affairs,
Bombay.

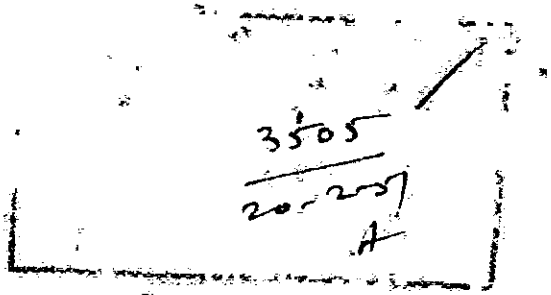
Subject:- Bijapur C.S.No.690/1950.
1. Shivaraya Rayappa Devur plff.
Vs.
1. The Province of Bombay
and others. defts.

Sir,

With reference to your No.13288 of 19-9-1950, I have the honour to state that the above suit was fixed for ~~hearing~~ filing W.S. on behalf of deft No.1 on 12-2-1951. On that I applied for 3 months time and the Court has adjourned the suit to 14-3-1951 for filing W.S. on behalf of deft No.1. I therefore request you to sanction the defence of this suit early.

Yours faithfully

Dist.Govt.Pleader, Bijapur.



LD

Submitted for information and orders

AE
20/2 A Sohr

He should be requested to apply for further adjournment if desired by Solicitors for the next date.

Ben Gour

No. 3271

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 22nd Feb 1951.

Subject:- Civil Suit No. 690 of 1950.

MEMORANDUM.

With reference to his letter No. /20 dated the 16th February 1951 the District Government Pleader, Bijapur is requested to apply for a further adjournment on 14-3-1951 if the defence of the suit noted above is not sanctioned by that date.

for Remembrancer of Legal Affairs.

To

The District Government Pleader,
Bijapur

Bijapur Civil Suit No.690 of 1950. 21

A1. This is a suit against the State of Bombay and six otherx defendants for the following reliefs :-

(a) The alienation of suit property dated 9-1-31 made by defendant No.4, Kashibai, in favour of defendants 2 and 3, the alienation of the same, dated 20-6-34 made by defendant No.4 to deft. No.5 and the subsequent sale of this property dated 7-6-35 made by deft. No.5 to deft. No.6 should be declared null and void and not binding on plaintiff.

(b) The Tagavi loan of deft. No.1 on the suit property should be declared as not binding on plaintiff

(c) The forfeiture order of the suit property should be declared as not binding on the plaintiff.

(d) Possession to be restored with future mesne profits.

2. One Rayyappa Devur, the original owner of suit property, S.No.269 of Honnutagi, died in 1930, leaving behind his wife deft.No.4 and two daughters, defts. Nos.2 and 3, Deft.No.4, Kashibai passed a deed (Malkipatra) of the suit property dated 9-1-31 in favour of defts. 2 and 3, reserving to herself the usufruct of the property till her life time. Kashibai, thereafter sold the suit property to deft.No.5 by a sale deed of 20th June,1934. Deft.No.5 sold this property to Deft.No.6 by a sale deed of 7th June 1935.

3. In 1935, the daughters, Parwatawa and Yellawa, defts. 2 and 3 filed a civil suit No.434/1935, against the father of deft.No.5, deft.No.4 and deft.No.6 for a declaration that they (daughters) were the owners of the suit propery and that the alienations of 1934 and 1935 were not binding on them. The suit was decreed in favour of the daughters on 4-1-37.

4. On 19-3-38 the deft. No.6 applied for a Tagai loan on the security of suit property. The daughters objected to the loan on the strength of the decree

obtained by them in C.S.No.434 of 1935. But ultimately the Tagai loan was granted on 30-3-38 on the security of the suit property. The document of mortgage, hypothecating the suit property for the Tagai loan was passed by deft.No.4 in favour of Govt. on 30-3-38. File p.261 to 265

As was expected, deft.No.6 defaulted and the Mortgaged property i.e. S.No.269 was ordered to be forfeited by the D.D.C. On 15-7-45. File p.106.

6. On 29-5-47 Kashibai, it was alleged in the plaint, adopted the plaintiff.

7. On 14-2-50, the plaintiff gave notice of suit under sec.80, Civil Procedure Code and on 10-6-50 he filed this suit in the Court of Civil Judge, Senior Division, Bijapur, for the above mentioned reliefs.

8. Unfortunately, the judgment or decree in civil suit No.434/35 and the sale deeds are not in the file. However it can safely be presumed from the Report of the Collector and District Govt. Pleader, Bijapur, that the defendants 2 and 3 were ~~the~~ declared to be the owners of the suit property under c.s.No.434/35 and that the alleged sale deeds have taken place.

9. In the circumstances mentioned above it is submitted, the order of forfeiture is, prima facie, defensible. With respect to other reliefs claimed in the plaint Govt. is not concerned with. The suit is not defensible. The Collector and the District Govt. Pleader also agree with this conclusion.

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18/6

Solicitor (M.S.) The Pff's right to file this suit may be disputed by denying knowledge about the Pff's alleged adoption by legatee. It may be also urged that the Pff has no right to challenge the prior alienations made by the adoptive mother. If the Pff succeeds on these points we have hardly any defence on merits

18/6

2327

Subs

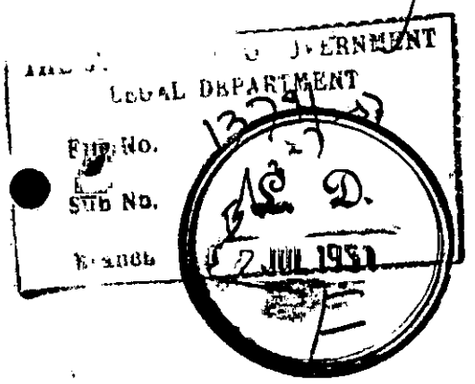
As directed. The grounds of Defence have been prepared and subd.

The Defence of the suit may be sanctioned, on the lines of the accompanying grounds of Defence.

PMG
27/6

Solicitor (M. & D.) JKK 22-6-51

× Secy R. & D. 28/6/51




REVENUE DEPARTMENT,
SECRETARIAT, BOMBAY.
02 JUL 1951

× No. 10395
dt 30-6-51

No. 10.584

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), ~~April~~ 4th July 1951.

25 29

Subject:- Bijapur Civil Suit No. 895/1950

MEMORANDUM:

The District Government Pleader, Bijapur is informed that the defence of the suit noted above is sanctioned and he is requested to conduct the same on the lines of the brief, a typed copy of which ~~together with two copies of the Written Statement~~ is sent herewith in advance.

Papers of the case in one file received from the Collector accompany.

for Remembrancer of Legal Affairs.

To

The District Government Pleader, Bijapur

KML/4

Submit for sig
Dy
3/7
Asst Director (Mis.)

Issued
4/7

No. 525 of 1951. 276
Date:- 11-7-1951

To

The Remembrancer of Legal Affairs,
Secretariat, Bombay.

Subject:- Bijapur Civil Suit No.690/1950.

Sir,

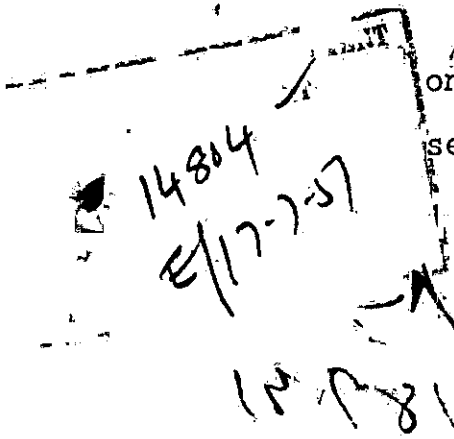
With reference to your memorandum No.10584 of 4-7-1951 I have the honour to state that written-statement drafted by me is submitted herewith for favour of Revision along with Papers of the case in one File.

The suit is fixed for putting in written-statement on 16-7-1951 and the written statement as revised may be sent to me along with the papers of the case.

Yours faithfully

Ahmad

District Govt.Pleader, Bijapur.



Please see the letter overleaf

from the D.C.P. Bijapur forwarding
in Bijapur Cir No 690/50
a draft W. O. The draft covers
the points raised in the grounds of Defence.
The accompanying draft may be approved

Orig
187

Addl Asstt (in-c) 18/7/31

29 25

In the Court of the Civil Judge, Senior Division,

At Bijapur.

Civil Suit No. 690 of 1950.

1. Shivaraya of Benakanhalli. plff.

Vs.

1. The Province of Bombay & others. defts.

Herein the defendant No.1 by his written-statement states as under:-

1. The factum and validity of the alleged adoption relied upon by plaintiff are denied. The plaintiff is not the validly adopted son of Rayappa. The Plff is put to the strict proof of his alleged adoption.

2. This defendant denies the allegations in para 10 of the plaint to the effect that defendant No. 4 adopted the plaintiff on 29-5-1947 and that the ceremoney of giving and taking took place according to law and custom. The defendant does not admit the plaintiff's allegation in para 10 of the plaint to the effect that a Photo was taken and adoption deed was executed and registered.

3. The plaintiff's allegation in para 3 of the plaint that inter alia the recital in the surrender deed dated 2-1-1931 to the effect that the husband of deft. No. 4 had prohibited defendant No.4 from adopting is false is not correct and is denied. In view of the prohibition to adopt as stated ~~and~~ in the surrender deed defendant No.4 was not competent to adopt and the adoption relied upon by the plaintiff is not valid.

4. The allegation in Para 3 of the plaint that the surrender was brought about through undue influence and fraud is not correct and is denied.

5. The plaintiff admits that defendant No.4 sold

suit land to the father of defendant No.5 for satisfying the debt of her husband and therefore the sale is binding on the plaintiff as he on his own admission was subsequently adopted. The plaintiff thus cannot challenge defendant No.4's alienation in favour of the father of defendant No.5 nor can he challenge the further alienations and orders in respect of the suit land. The plaintiff's allegations in para 12 of the plaint that deft 6 had no interest in the suit land and that he is entitled to possession as owner are not correct.

6. The plaintiff is no owner of the suit land and his allegation in Para 10 of the Plaint to the effect that he has become owner of the property of Rayappa and that he is entitled to the possession of the suit land are not correct and are denied.

7. The allegations in paras 11, and 13 are not correct and are denied. The plaintiff has no cuase of action and the plaintiff is not entitled to any of the reliefs prayed for by him.

8. Plaintiff's title to the suit land is denied. The defendant denies the remaining grounds of plaintiff's claim in his plaint.

It is therefore submitted that plaintiff's suit be dismissed with costs.

District Government Pleader, Bijapur.

I, A.C.Angadi, B.A.LL.B., District Government Pleader, Bijapur, do hereby declare that what is stated in paras 1 to 8 above is true on information received and believed to be true.

Dated this day of the month of in the year 1951.

District Government Pleader, Bijapur.

37/31

No. 11961
Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 21st July 1951.

Subject :- Civil Suit No. 690 of 50

Memorandum:

With reference to his letter No. 525 . dated the 11 - 7 - 51 forwarding a draft written statement in the suit noted above for approval, the District Government Pleader, Bijapur is informed that two copies of the ~~revised~~ approved draft are forwarded herewith.

Papers of this case
may be filed
herewith returned

For Remembrancer of Legal Affairs.

To

The District Government Pleader, Bijapur

Submitted for sig
Orig
20/7

HSP/4/7

Issued
dbp
21/7

*Suits :*

Bijapur.

For a declaration of the invalidity of the various alienations in respect of suit property and for possession thereof on the strength of his alleged adoption by defendant No. 4.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 11129.

Bombay Castle, 14th July 1951.

Letter from the Collector of Bijapur, No. Law 200, dated the 4th August 1950—Forwarding the papers in the suit noted in the margin and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BIJAPUR.

CIVIL SUIT No. 690 OF 1950.

Shivaraya Rayappa Devoor ... Plaintiff;

*versus*

The State of Bombay; and six others ... Defendants.

Memorandum to the District Government Pleader, Bijapur, No. 10584, dated the 4th July 1951—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

J. R. DIIURANDHAR,
Secretary to Government.

Original for §

L. Leg. H 97—1

[P.T.O

To

*The Revenue Department,
*The Collector of Bijapur,
The District Government Pleader, Bijapur (with two copies of the brief).

*With a copy of the brief.

No. of 1951.

Copy forwarded for information and guidance to

Submitted after issue
File in S. Bijapur /57 (new)
6/9/57
ASO
Cr/19.

BIJAPUR CIVIL SUIT No. 690 OF 1950.

*Chronological Statement of facts.*

1. This is a suit against the State of Bombay and six other defendants for the following reliefs:—

(*a*) The alienation of suit property, dated the 9th January 1931, made by defendant No. 4, Kashibai, in favour of defendants Nos. 2 and 3, the alienation of the same, dated the 20th June 1934, made by defendant No. 4 to defendant No. 5 and the subsequent sale of this property, dated the 7th May 1935, made by defendant No. 5 to defendant No. 6 should be declared null and void and not binding on plaintiff.

(*b*) The Tagavi loan of defendant No. 1 on the suit property should be declared as not binding on plaintiff.

(*c*) The forefeiture order of the suit property should be declared as not binding on the plaintiff.

(*d*) Possession to be restored with future mesne profits.

2. One Rayyappa Devur, the original owner of suit property, S. No. 269 of Honnutagi, died in 1930, leaving behind his wife, defendant No. 4, and two daughters, defendants Nos. 2 and 3. Defendant No. 4, Kashibai, passed a deed (Malki patra) of the suit property, dated the 9th January 1931, in favour of defendants Nos. 2 and 3 reserving to herself the usufruct of the property till her life-time. Kashibai thereafter sold the suit property to defendant No. 5 by a sale-deed of 20th June 1934. Defendant No. 5 sold this property to Defendant No. 6 by a sale-deed of 7th June 1935.

3. In 1935, the daughters, Parwatawa and Yellawa, defendants Nos. 2 and 3, filed a civil suit No. 434/1935, against the father of defendant No. 5, defendant No. 4 and defendant No. 6 for a declaration that they (daughters) were the owners of the suit property and that the alienations of 1934 and 1935 were not binding to them. The suit was decreed in favour of the daughters on 4th January 1937.

4. On 19th March 1938, the defendant No. 6 applied for a Tagavi loan on the security of suit property. The daughters objected to the loan on the strength of the decree obtained by them in C. S. No. 434 of 1935. But ultimately the Tagavi loan was granted on 30th March 1938 on the security of the suit property. The document of mortgage, hypothecating the suit property for the Tagavi loan was passed by defendant No. 4 in favour of Government on 30th March 1938.

5. As was expected, defendant No. 6 defaulted and the mortgaged property, *i.e.*, Survey No. 269 was ordered to be forfeited by the D. D. C. on 15th July 1945.

6. On 29th May 1947, Kashibai, it was alleged in the plaint, adopted the plaintiff.

7. On 14th February 1950, the plaintiff gave notice of suit under section 80, Civil Procedure Code, and on 10th June 1950, he filed this suit in the Court of Civil Judge, Senior Division, Bijapur, for the above-mentioned reliefs.

*Grounds of Defence.*

1. The plaintiff sues for a declaration of the invalidity of the various alienations in respect of suit property and for possession thereof on the strength of his alleged adoption by defendant No. 4, *i.e.*, the widow of the deceased Rayyappa Devur. The allegations made by the plaintiff in paragraph 10 of the plaint regarding his adoption and its validity should be specifically denied. It should be contended that this defendant denies any knowledge regarding the alleged adoption of the plaintiff by the widow on 29th May 1947, the ceremony of giving and taking alleged to have been undergone as per custom of the caste to which the parties belonged, and also the right of the widow to adopt to her husband.

2. The plaintiff should be put to the strict proof of this alleged adoption and its legality. Unless and until the plaintiff strictly proves his title as the adopted son of the deceased Rayyappa Devur, the plaintiff is not entitled to sue for declaring the alienation invalid or for possession of the suit property.

3. The alienation made by the adoptive mother in respect of the suit property is prior to the date of adoption. The plaintiff alleges in plaint that he was taken in adoption on 29th May 1947, while the sale of suit property was effected by the widow on 20th June 1934. The plaintiff cannot, therefore, challenge this alienation.

4. There should be a general denial of the remaining grounds of claim. For these reasons it should be contended that the suit fails and should be dismissed with costs.

S. Bijapur 11/9/57

2/57

No. 838 of 1951.
Date:-23-10-1951.

To

The Remembrancer of Legal Affairs,
BOMBAY.

Subject:- Bijapur C.S.No.690/1950.,
1.Shivarayya Rayappa Deur . plff.
Vs.
1. The state of Bombay
and others. defts.

Sir,

I have the honour to forward herewith an uncertified copy of the issues framed in the above suit.

Yours faithfully

Ahmad

District Govt.Pleader,Bijapur.

THE SECRETARY TO GOVERNMENT
LEGAL DEPARTMENT
File No. 22269
Sub No. 26/10/57
Branch E

~~D.S.P. Bijapur~~ forwarded
copies of 690 of 1950 (newspapers)
They seem to be in order
File in ~~B 4~~ 2/51

~~31/10~~

~~D.S.P. Solr~~

The D.S.P. has forwarded
copy of Issues in this Sub-Div.
The Issues appear to be
in order.

1-11.

Sol-(Jud.) 1-11-51

Suit No. 690 of 1950.

Exhibit No.43.

W5

Issues.

1. Whether the plaintiff proves that the defendnt No. 4 adopted him with due ceremonies to her husband on 29-5-1947 ?
2. Whether the defendant No.4 had been prohibited by her husband from making any adoption ?
3. Whether on 20-1-1934 the defendant No.4 had power to pass the sale deed in favour of the defendant No.5's father ?
4. If so, whether the defendant No.1 proves that the said sale deed was passed for paying a debt due from the defendant No.4's husband ? Did the defendant No.5's father make bona fide inquiries and believe in good faith that the sale deed was being passed for paying the defendant No 4's husband's debt ?

P.T.O.

46.



5. What decree ?

October 20, 1951.

Sd.M.M.Nadkarni.
CIVIL JUDGE,SR.DN.,

" True Copy "

Ahmad

DistSict Govt.Pleader,
Bijapur.

S.By 2/57
37-5

No. T.A.G.S.R. 2904
Bijapur, 5-4-1952.

39

To

The Remembrancer of Legal Affairs,
BOMBAY.

Subject:- Bijapur Civil Suit No. 690 of 1950.

Reference:- G.R.L.D. No. 11129, dated 14-7-1951.

In the suit referred to above, the plaintiff has made an application to this office requesting for restoration of the suit land on payment of tagai dues accrued till todate by him. The Dist. Govt. Pleader who was referred to in the matter opines that a compromise may be affected on the following terms:-

(a) On the plaintiff paying to the Govt. Rs. 159-0-0, the amount should be paid to defendant No. 7 and Govt. should take possession of the land and grant it to the plaintiff.

(b) in case any of the parties or others proceed against the plaintiff and get title to the land in due course of law, the plaintiff would give up all his rights in this respect against Govt. in respect of the loss due to the land being taken away from him by any of the persons.

(c) the parties should bear their costs.

Sanction may therefore be accorded to affect a compromise in the suit on the terms proposed by the Dist. Govt. Pleader.

The application dated 2-2-1952 received from the plaintiff and copies of letter Nos. 156/52 dated 3-3-1952 and 206/52 dated 19-3-1952 from the Dist. Govt. Pleader are enclosed.

7/31
12/4/52
E

O.C.signed
by Collr.

For Collector, Bijapur.

Copy submitted to Govt. in Revenue Department.

Copy forwarded w.cs. to the Dist. Govt. Pleader, Bijapur for information.

L.D.

Pl. see overleaf letter from the Collector of Bijapur forwarding the Cenvo on which Rs. 700.690/50 may be remitted.

On the 1st instance this may be sent to R.D. for remarks.

14/4

A. Sub

The Bro's proposal contained in the letter under may, in the first instance, be forwarded to the R.D. for remarks

14-4.

Sec. (Rev.) SRK

Rec'd 15-4-52

(Encl to R.D. No. 5716 dt 17-4-1952

(with the No. S.Bij. 2/51)

14/4

REVENUE DEPARTMENT
File No. L D 5716 (14)
Date 17 APR 1952
Serial No. B 31934

Rd. 16.4

Sec'y (Rev.)
16.4.

Supdt
21.4.

No. 156 of 1952
3-3-1952

41/49

Returned with compliments to the Collector of Bijapur.

1. The facts are stated in the brief accompanying Government resolution No. 11129 of 14-7-1951 (page 33).

2. After the mortgaged property was ordered to be forfeited by the D.D.C. on 15-7-1945 the suit land was brought to Government waste and was ordered to be leased out annually.

3. The land was leased to one Hanamappa by public auction for the year 1945-46 on a rental of Rs. 12-6-0 which was realised. It was leased to one Paramgondappa Bagli for Rs. 14/= for the year 1946-47 and the amount was also realised. For 1947-48 also it was let to him on a rental of Rs. 19/- and it was also realised.

4. The defendant No. 7 Gurappa the brother of defendant No. 6 made an application to the Mamlatdar on 20-4-1948 stating that he would pay all the Tagai dues and that the forfeiture be cancelled and the land regranted to him. He paid Rs. 159/- and the Mamlatdar made a report. The Collector returned the papers for fixing the occupancy price and for asking defendant No. 7 as to whether he was willing to pay the occupancy price. Defendant No. 7 was not willing to pay the same.

(ii) The lease amount of Rs. 19/- plus local fund cess was recovered from defendant No. 7 for the year 1948-49 and thus it appears that defendant No. 7 continued to be in possession.

5. If the plaintiff succeeds he will have to get the land and mesne profits from 1950-51 and costs of the suit. Further the amount of Rs. 159/= credited by defendant No. 7 will have to be refunded to him.

(ii) By the application dated 2-2-1952 at pages 41 and 42 the applicant offers to pay the arrears of tagavi dues to Government with interest and prays for possession of the land. If this course is a proved the amount recovered from

Gura pa.....

Gurappa defendant No. 7 will have to be refunded to him from the amount offered to be paid by the plaintif - applicant.

(iii) I therefore am of opinion that the offer as made by the plaintiff-a plicant is reasonable, and there--fore, may be accepted subject to what is stated below:-

(a) On the plaintiff paying to the Government Rs. 159/- the amount should be paid to defendant No. 7 and Government should take possession of the land and grant the land to the plaintiff.

(b) The parties should bear their costs.

On these lines the suit may be compromised after obtaining the previous permission of the Remembrancer of Legal Affairs.

As the suit is fixed for hearing on 19-3-1952 the matter may be reported very early to the Remembrancer of Legal Affairs, Bombay.

Sd/- A.C. Angadi.
Dist. Government Pleader,
Bijapur.

57

No. 206 of 1952
19-3-1952.

43

To

The Collector of Bijapur.

Bijapur Civil Suit No. 690/1950

1. Shivaraya Deur ... Plff.
Vs.
1. The Bombay Province.. Defts.
and others.

Sir,

In continuation of my report No. 177 of 7-3-1952 I had a discussion with the personal assistant to the Collector as suggested in your No. P.A.G.S.R. 2904 of 8-3-1952. It was suggested to me in the course of personal discussion that I should report with some further details and therefore I am submitting this report to you.

(2) The facts are that the suit land was owned by Rayappa Deur. He died leaving behind him his widow deft No. 4 and two daughters defendants Nos. 2 and 3. Defendant No. 4 passed a Malki Patra of the suit land in favour of defts Nos. 2 and 3 on 9-1-1931 reserving to herself the usufruct of the property till her life-time. Kashibai thereafter sold the suit land to defendant No. 5's father on 20-6-34. Deft. No. 5 sold the land to deft. 6 on 7-6-35.

(3) In 1935 the daughters namely, defts 2 and 3 filed suit No. 434 of 1935 against the father of deft. No. 5 deft. No. 4, and deft. No. 6 for a declaration that they (the daughters) were the owners of the suit property and that the alienations of 1934 and 1935 were not binding on them. The suit was decided in favour of the daughters on 4-1-1937.

(4) On 19-3-38, deft. No. 6 applied for Tagai-loan on the security of the suit property. The Tagai-laan was paid on the security of the suit property. Deft No. 6 did not pay the Tagai dues and the land was forfeited and was taken possession of by the Government. It was let from year to year and ultimately it appears to be now in the possession of deft. No. 7 as stated by me in my endorsement No. 177 of 7-3-1952.

(5) The Government denies the factum of adoption of the plaintiff. It is contended on behalf of the Government that

in.....

in the surrender deed passed by deft. No. 4, she has stated that she had been prohibited by her husband from adopting and that therefore the adoption is not valid. It is further contended that the plaintiff cannot challenge deft No. 4's alienation in favour of the father of deft. No. 5 on the ground that deft No. 4 passed the sale deed of the suit land to the father of deft No. 5 for satisfying the debt of her husband and that therefore the sale is binding on the plaintiff as on his own admission he was subsequently adopted. The contentions of the Government are embodied in the brief --- sanctioned by the Legal Remembrancer of Legal Affairs, a copy of which is in your Office. Defendants Nos. 3 and 4 have supported the plaintiff by Exs. 20,13 and 24 and they have stated in the W,S. in the suit that they consent to a decree being passed in favour of the plaintiff.

(6) Defendants Nos. 5 and 6 have remained absent and the suit has proceeded against them ex parte.

Defendant No. 7 opposes the plff's suit by Ex. 55.

(7) The issues are :-

(1) Whether the plff proves his adoption?
(2) Whether deft No. 4 had been prohibited by her husband from making an adoption?
(3) Whether defendant No. 4 had power to pass the sale-deed to deft No. 5 on 20-1-1934?
(4) Whether defendant No. 1 proves that the sale-deed was passed for paying off a debt due from deft No. 4's husband? Did deft No. 5's father make bona fide inquiries and believe in good faith that the sale-deed was being passed for paying deft No. 4's husband's debt?

(8) It may thus be seen that defendants Nos. 2 to 4 have admitted the Plaintiff's claim. The only contending parties are the Government (defendant No. 1) and defendant No. 7.

(9) In view of these facts and in view of my endorsement No. 177 of 7-3-1952, I am of opinion that the suit may be compromised with the plaintiff on conditions which I have mentioned in my endorsement No. 177 with the additional condition that in case any of the parties or others proceed against the plaintiff and get title to the land in due course of law, the plaintiff would give up all his rights in this respect against the Government in respect of the loss which he may sustain on account of any loss due to the land being taken away from him by any of the persons.

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A compromise however can only be effected with the previous approval of the Remembrancer of Legal Affairs, Bombay. If deemed fit, the matter may be reported to the Remembrancer of Legal Affairs or the papers may be returned to me for proceeding with the suit.

Sd/- A.C.Angadi

Dist. Govt. Pleader,
Bijapur.

To

The Collector,

District Bijapur.

1. Shivaraya Rayappa Devur,
of Benkanhalli, taluka Indi — Applicant.

Herein, the applicant submits as under:--

1. The applicant has filed civil suit no.690 of 1950 in the Court of the Civil Judge, Sr.Dn.Bijapur, against the Government(defendant no.1), and others, contending that the forfeiture order passed by the District Deputy Collector, regarding survey no.269 of Honutgi, taluka Bijapur, is not binding on the applicant and that possession of the suit land be awarded to him. Without prejudice to his existing rights now the applicant offers to pay the arrears due to Government with interest and prays that the possession of the said land be awarded to him. The facts leading to the forfeiture of the said survey no. are as below:-

2. (i). One Rayappa, the owner of the said land, died in the year 1930, leaving behind him his widow Kasava and two daughters-Parvatewa and Mallava. The said widow Kasava conveyed the said land to the two daughters by a Malki-Patra, dated 9-1-1931, reserving a life-interest to herself. Later on, in the year 1934 the said widow sold the same land to one Shivagouda Chanmallappa Bilgi of Honutgi. The said Shivagouda sold the said land to one Channappa Shivappa Bisnal, on 7-6-1935.

(ii). The two daughters-Parvatewa and Yallava filed civil suit no.434 of 1935 in the Court of the

Joint Sub-Judge at Bijapur praying for a declaration that they were the owners of survey no.269 of Honutgi, and that the alienations to Shivagouda and Channappa were not binding on them. Therein, the reliefs prayed for by the daughters were decreed on 4-1-1937 holding that they were the owners.

(iii). After the abovementioned declaration, Channappa Shivappa Bisnal applied to the District Deputy Collector for a Tagai loan of Rs.200/- on 14-3-38 for improving the said land. The two daughters made an application to the Mamlatdar mentioning the fact that they were the owners of the land and that the loan should not be sanctioned. Inspite of the application, the Mamlatdar advanced the loan to the said Channappa. The said Channappa made default in payment of instalments and the District Deputy Collector, Bijapur Dn., ordered for forefeiture of the said land. It was forfeited on 15-7-45.

3. Kashibai, the widow of Rayappa, adopted the applicant Shivaraya on 29-5-47. And the present applicant has filed the abovementioned civil suit no.690 of 1950 against the Government and others. The District Government Pleader appears on behalf of Government in the said suit and the correctness as to the contents of this application may be got verified.

Under the circumstances, it is prayed that the arrears due to Government be accepted with interest and the possession of the said land be awarded to the applicant.

For which act of kindness the applicant remains grateful.

Bijapur.
Dated 2-2-52.

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} ಪ್ರತಿವಾದಿ
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Sri. ಎನ್. ಎ. ಹೆಗ್ಡೆ ಹೊಳಲಿಯವರಲ್ಲಿ ನಾನು

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Accepted on:—
Presented on:— } ೪-೨-೫೨.

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51 ~~59~~ Rev. Dept. B

(No. L.D. 5716/31934)

S.No. 269 of Hunnitagi, Tal. Bijapur, was owned by Shri Rayyappa Devur. He died in 1930 and the land was inherited by his wife Kashibai. Bai Kashibai transferred the land to her two daughters by a Mukti-Patra in 1931 reserving to herself the usufruct of the property till her life. In 1934, she sold the land to Shri Shivgonda Bilgi, who in his turn sold it to Shri Channappa Bimal in 1935. The two daughters filed a suit in court claiming the ownership of the land and for a declaration that the alienation of the land was not binding on them. The suit was decided in their favour in 1937. Shri Channappa applied for a tagai loan in 1938 on the security of the land. The loan was sanctioned inspite of the protest of the daughters. He defaulted in repaying the loan and the land was forfeited to Govt. The land is being leased out for cultivation and is being cultivated as present by the defaulters brother Shri Gurappa Bimal. He has offered to purchase the land in payment of Govt. dues and has already credited the necessary amount to Govt.

2. In 1947, Bai Kashibai adopted Shri Shivaraya as her son. He has filed a suit against Govt. for the cancellation of the order of forfeiture stating that Shri Channappa had no valid title over the land

and as he is the adopted son of Bai Kashibai, the land shd. be restored to him. Now he has come with a proposal for the compromise of the suit and is ready to pay the arrears of Govt. dues if the land is restored to him. The Collr. recommends compromise of the suit on the terms suggested by the Govt. Pleader.

3. Under G.R., Rev. 7204/39, dt. 28.8.1941, lands which are forfeited for the recovery of arrears of Vagai dues, may be restored to the original holders or their heirs, provided certain conditions are satisfied, if they apply for the regrant of the land within a period of 5 years. The land is not to be disposed of permanently for this period of 5 years so as to give the original holders an opportunity to claim it back. From para 4 of the D.G.P's endst. p.3 dt. 3-3-1952, it is seen that the brother of the defaulter who has credited the amt. of the arrears to Govt. was consulted whether he was willing to pay the o.p. but he has expressed his unwillingness to do so. It is not clear from the pp whether the defaulter himself was consulted whether he is willing to get the land back on the conditions mentioned in the G.R. referred to above. It may, however, be presumed that he does not want the land back and that

a copy for up

his brother was acting in his behalf. In any case, the orders contained in the G.R. are executive orders and may be departed from if circumstances justified such a departure. As stated earlier, the Court has held that the daughters of Bai Kashibai were the rightful owners of the land and it is, therefore, not clear whether the sale of the land by Bai Kashibai was valid and whether the advance of tagai loan to Shri Shanmappa inspite of this ruling was regular. However from para 4 of the D.G.P's letter, dt. 19-3-52, it seems that the R.L.A. is satisfied that the sale is valid.

4. There appears to be no objection in compromising the suit on the terms suggested by the D.G.P. and this dept. may agree to the compromise if R.L.A. is satisfied that no legal complications are involved. Thereafter notice could be caused to the daughters 24-4-52 R.D. may see after R.L.A. has confirmed this.

Encl to Law Dept. No. L.D. 5716/(Rev) 31934, dt. 25th Apr. 1952 & with Law file S. Rij. 2/51

THE SECRETARY TO GOVERNMENT
LEGAL DEPARTMENT
FILE NO. 8500
SUB NO. 29/4/52
REMARKS E

L. D.

Please see the letter at page 1 (ante).

It relates to the Compromise proposal submitted to the Collector, Bijapur, by the Pltff(s) in respect of the C.S. No. 690 of 1950.

The application is at page 9.

1) Facts of the case are set forth in detail in the brief prepared with the case. (vide pages 39 to 41 of the yellow file)

2) Position of parties in this case may be taken into Consideration. Pltff was taken in adoption by deft no 4 in 1947. Deft no 1 is the State of Bombay. & filed this suit against seven defts for the reliefs claimed therein

Deft(s) no 2 & 3 are daughters of Deft 4. Deft no 5 & 6 are the alienees ~~of~~ of the ~~suit property from~~ Deft no 4. Deft no 7 is the brothers of Deft no 6.

3) Transactions in respect of the subject matter may also be noted. In 1931 Deft no 4 - the adoptive mother - passed a Malki patra of the suit land in favour defts nos 2 & 3 reserving to herself the usufruct during her life time. In 1934 this widow passes a sale deed of the suit land to deft no 5 - who in turn, sold it to deft no 6. in 1935. In 1935 the daughters - defts nos 2 & 3. brought a suit for declaration that they were the owners of the property & the so called sale deeds

Rejn (with Ltr)
25/4
Pl. issue ntc
to Adv
25/4
25.4.52

were not binding on them. The Court decreed the suit to the daughters. Thereafter Deft no 6 obtained a Jagai loan from the Govt on the security of this very land. Loan was granted. loanee defaulted & the property was ordered to be forfeited by the D.D.C.

4) Defence is sanctioned in this suit on technical grounds.

5) Now the proposal to compromise the suit comes from the Pltffs.

6) The D.Q.P at page 5, ante, remarks that Deft no 2 to 4 have admitted the Pltffs' claim title. Only contesting parties are Deft no 1 & 7. It is not clear from the papers, whether Defts 2 to 4 have passed a purshis in Court accepting the Pltffs' adoption & the right to the suit property or they have gone exparte. Secondly, it is not also clear how did deft no 7 come into the picture at all & how he got possession

of the Suit property & from whom.)

2) The Compromise proposal was sent to R.D for approval & The Revenue depart sanctions the Compromise proposal Conditionally.

It is therefor, submitted that ~~~~ information as At "A" may be called for from the D.G.P. before any Conclusion is arrived at regarding the Compromise proposal by the Petr.

6/5

Solicitor (Mrs.) Call for the information

7/5/15

No. 8152 5765

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No. 1), 15/16 May 1952.

Subject : Proposal for Compromise in
Bijapur Civil Suit No. 690/50.

MEMORANDUM.

With reference to the above subject, the District Government Pleader, Bijapur, is requested to supply the following information immediately to this office :-

1. Whether defendants 2, 3, 4 have admitted the plaintiff's adoption and his right to the suit property, specifically in this Suit?

2. In whose possession the suit land is at present? What are the rights of Defendant No. 7 with respect to Suit property?

for Remembrancer of Legal Affairs,

To

The District Government Pleader,
BIJAPUR.

PKP.13.5.52.

Subs

The information, called for, has reached this office in my absence on leave. Defts 2, 3, 4 have admitted the pltff's adoption & his right to recover the property. Deft no 7 claims the property as his own by transfer; & is at present in possession of the Suit property. (vide W. St.) Under the Circumstances, it will be difficult for the Govt to recover possession from Deft no 7 & pass it on to the pltff unconditionally, as proposed in the Compromise application. Besides, Deft no 7

59

has paid the arrears ← has also paid the
is willing to pay
The assessment ← The occupancy price
as proposed by the Prantofficer ← the Collector
~~Under~~ So Under Deft no 7 is willing
to Compromise the Suit, Govt will not
be in a position to pass over the possession
Therefore
This aspect of the Case may be noted.*
before sanctioning the Compromise Application

Dng
6/6

Solicitor (Mr.) To D.G.P. may be requested
to expedite the proposal

Compromise would be signed
by the parties who have first
an opportunity to read it,
including Dept 17. He should
be also asked to prepare and
submit a draft of the proper
compromise. The compromise
instrument should deal with
& settle the matter of every
party concerned, but should
so far as there may be outstanding
decisions with one

JRK 7/16/52

2/51

No. 413 of 1952.

19-5-1952. 61
20

To

The Remembrancer of Legal Affairs,
Secretariat, Bombay.

Sub:- Bijapur Civil Suit No. 690/1950.

Sir,

With reference to your memorandum No.8152 of 15-5-1952 requesting me to state as to whether defendants 2,3, and 4 have admitted the plaintiff's adoption and his right to the suit property specifically in this suit, I have the honour to send herewith copies of their written statements in this suit. They are Exhs. 20, 13 and 24 respectively in the suit. I have also attached translations of the same with them. Defendant No.4 has, by her written statement, specifica-lly admitted the plaintiff's adoption. All these defendants, 2,3, and 4,by their written statements, state that they admit the plaintiff's claim and that they have no objection to a decree being passed as prayed for by plaintiff.

2. With reference to your query as to who is in possession of the suit land at present and what are the rights of defendant No.7 with respect to the suit property, I have the honour to send herewith a copy of the written statement of defendant No.7 in this suit. It is Exh.35 in the suit.

GOVERNMENT
LEGAL DEPARTMENT
Rec. No. 10432
Dated 27/5/52
E

The facts are stated in the brief accompanying the Government Resolution No.11129 of 14-7-1951.

After the hypothecated or mortgaged property was ordered to be forfeited by the District Deputy Collector on 15-7-1945, the suit land was brought to Government waste and was ordered to be leased out annually.

The land was leased to one Honnappa for the year - 1945-46 on a rental of Rs.12-6-0 which was realised. It was let to one Paramgondappa Bagli for Rs.14/- for the year 1946-47 and the amount was also realised. For

1947-48 also, it was let to him on a rental of Rs.19/- and that amount also was realised.

The defendant No.7 Gurappa, the brother of defendant No.6 made an application to the Mamlatdar on 20-4-1948 stating that he would pay all the Tagai dues, that the forfeiture be cancelled and that the land be regranted to him. He paid Rs.159/- and the Mamlatdar made a report. The Collector returned the papers for fixing the occupancy price and for asking defendant No.7 as to whether he was willing to pay the occupancy price finally fixed by the Collector. Defendant No. 7 was not willing to pay the price fixed by Panchas. He further made a statement on - 13-5-1949 that he would not be able to pay Panch valuation that may be fixed by the Collector.

Shivaraya Rayappa Devur of Honagi (the plaintiff), made an application to the District Deputy Collector to Hand-over possession of the suit land to him. He was directed to approach the Civil Court on 8-7-1949 by the District Deputy Collector, Bijapur.

The Mamlatdar reported that Gurappa was willing to pay occupancy price equal to 3 times the assessment for the forfeited holding and that he had already paid Rs.5-15-0 equal to one year's assessment including L.F. The Mamlatdar recommended that the land may be restored to Gurappa on a nominal price equal to 3 times the assess--ment of the land.

The Prant Officer returned the correspondence to the Mamlatdar to record the statement of Gurappa to know as to whether he is willing to hold the land on a new and impartable tenure. Gurappa consented to take the land on new and impartable tenure. This was reported by the Mamlatdar to Prant Officer. The Prant Officer submitted the papers to the Collector. The Collector returned the papers to the Mamlatdar to furnish a statement showing the lease amount credited by the lessee since 15-7-1945. The Mamlatdar submitted a statement showing lease amount and the names of lessees as stated above from 1945-46 to 1947-48 both

4963

inclusive. He added that the land was not leased out for the year 1948-49 as proposals were submitted to restore the land.

The Collector then directed the Mamlatdar to ascertain if Gurappa cultivated the land for the year 1948-49, and if so, the lease amount should be recovered and credited to Government. The lease amount of Rs.19/- plus the Local Fund Cess was recovered from defendant No.7 for the year 1948-49, and was credited into the Sub-Treasury on 25-5-1950. In the meanwhile, a notice of this suit had been received by the Collector in February 1950, and further steps in respect of this notice and in respect of the defence of this suit were taken.

3. It would thus appear that defendant No.7 continues to be in possession. Defendant No.7 Gurappa has no right of ownership over the suit land.

I have submitted this report through the Collector of Bijapur so that the Collector may also add his own remarks, if any.

Yours faithfully,

Ahusadi

Dist. Govt. Pleader,
Bijapur.

G.O. 20/5 Forwarded through the Collector of Bijapur with respects

Ahusadi

District Government Pleader
Bijapur

L. D. 26 MAY 1952

No. TAC-2304
Bijapur 22-5-52

Forwarded with the Remembrancer of Legal Affairs, Secretariat, Bombay

for Collector, Bijapur

Ex 20 Civil Suit No. 690/1950

In the Court of the Civil Judge,
Bijapur.

1. Shivappa Rayappa Devur —Plff.

Vs.

1. The Bombay Province & Others —Defts.

Herein Deft No. 2 Parvateva Kom Honnappa Walikar submits her written statement as follows:

1. I admit the Plff's suit in toto.
2. I have no objection ~~to pass~~ for a decree being passed as prayed for by the Plff. So let ~~him be~~ a decree be passed as prayed for by the Plff.

27-9-50

Left thumb Impression of
Parvateva Kom Honnappa
Walikar.

Herein I Parvateva Kom Honnappa Walikar do hereby declare that what is stated above is true according to my personal ~~information~~

Left thumb Impression of
Parvatibai Kom Honnappa
Walikar.

File. sd. 31-10-50.

Ex. 13 Civil Suit No. 690/1950

In the Court of the Civil Judge, Bijapur.

1. —Plff.

vs.

1. The Bombay Province and others —Defts.

Hereon deft No:3 Yallawa s/o Kallappa Pujari states as follows:-

~~Deft No:3~~

1. This deft admits fully the Plff's suit. I have no objection to a decree being passed as prayed for by him.

28.8.50

Left thumb of Yallawa s/o Kallappa Pujari

ಗೆ 24
ಅಧಿಕ ನಂಬರ್ 6703
1950.

ಅಗತ್ಯವಾದ ಸೀಟ್ಗಳ ಸಂಖ್ಯೆ ಕೊಡಿಸಿ.

(೧) ಶಾಲಾಪ್ರವೇಶ ಪರೀಕ್ಷೆ — ೫೦ ಸೀಟು.

೫೦.

(೨) ೪ ಜಾಗಗಳಲ್ಲಿ ಪ್ರೀಲಿಮಿನರಿ ನಡೆಸಲಾಗಿತ್ತು.

ಇದರಲ್ಲಿ ತಮ್ಮ ಪ್ರೊ. ಎಸ್. ಶಿವಲಿಂಗಯ್ಯ
ಕೊಂ. ರಾಮಯ್ಯನವರ ಮಗಳು ಚಿ॥ ಸೌ॥
ಯಾಮಿನಿ ಕೊಡಿಸಿರುವ ಬಗ್ಗೆ ನಿಮಗೆ ಬಹುಶಃ
ತಿಳಿದಿರಬಹುದು.

(೧) ಎಸ್. ಎಸ್. ಎಲ್. ಸಿ. ಪರೀಕ್ಷೆಗೆ
ಕುಳಿತು ತೇರ್ಗಡೆಯಾಗಿರುತ್ತಾಳೆ.

(೨) ಎಸ್. ಎಸ್. ಎಲ್. ಸಿ. ಪರೀಕ್ಷೆಯಲ್ಲಿ ಪಾಸಾಗಿರುವ
ವಿದ್ಯಾರ್ಥಿಗಳಿಗೆ ಮಾತ್ರ ಪ್ರವೇಶ ಕೊಡಬೇಕೆಂಬ ಈ
ಪ್ರಕಾರ ಷರತ್ತುಗಳು ನಮಗೆ ತಿಳಿದಿವೆ.
ಹೊಸಬರು ಪ್ರೀಲಿ. ಆಗಿರುವುದು
ನನ್ನ ಮೈಲಿಗಂತರ ಬಗ್ಗೆ ಚಾರಣವಾಗಿರುವ
ಗ್ರಾಮ. ಉಪಯೋಗಕ್ಕಾಗಿ ಕೆಲವು ಮಂಡಲ
ಇವನ ಮಗಳಿಗೆ ಪ್ರವೇಶ ಕೊಡಿಸಿದ್ದು
ಆಯಿತೆಂದು ನನ್ನ ಮೇಲಿನ ಅಧಿಕಾರಿಯವರಿಗೆ
ಅಂದು ತಿಳಿಸಿದ್ದೆ. ಇದು 30-10-50.

ಇದರಲ್ಲಿ ತಮ್ಮ ಪ್ರೊ. ಎಸ್. ಶಿವಲಿಂಗಯ್ಯ
ಕೊಂ. ರಾಮಯ್ಯನವರ ಮಗಳು ಚಿ॥ ಸೌ॥
ಯಾಮಿನಿ ಪ್ರವೇಶ ಕೊಡಿಸಿರುವ ಬಗ್ಗೆ ನಿಮಗೆ
ಬಹುಶಃ ತಿಳಿದಿರಬಹುದು.

ಇದರಲ್ಲಿ ತಮ್ಮ ಪ್ರೊ. ಎಸ್. ಶಿವಲಿಂಗಯ್ಯ
ಕೊಂ. ರಾಮಯ್ಯನವರ ಮಗಳು ಚಿ॥ ಸೌ॥
ಯಾಮಿನಿ ಪ್ರವೇಶ ಕೊಡಿಸಿರುವ ಬಗ್ಗೆ ನಿಮಗೆ
ಬಹುಶಃ ತಿಳಿದಿರಬಹುದು.

Principal
Govt. Intermediate College
Mandya
31-10-50

75 ₹7

Ex.24

Civil Suit No.690/1950.

In the Court of the Civil Judge,

Bijapur.

1. Shri Sivappa Mayappa Devur ... Plaintiff.

Vs.

The State of Bombay.

Herein Deft. No.4 Kasibai Kom Mayappa Devur submits her written statement as follows:-

(1) I admit the plaintiff's suit in toto.

(2) I have taken the ~~pakk~~ plaintiff in adoption with the due ceremony of giving and taking and in what Connection I have passed a registered deed. Thus he is my husband's heir.

On account of these reasons I have no objection to a decree being passed as prayed for by the plaintiff.

Dated 31-10-1950.

Left Thumb Impression
Kasibai Kom Mayappa
Devur.

Herein Deft. No.4 Kasibai Kom Mayappa Devur of Honutgi do hereby declare that what is stated above is ~~xkxx~~ true according to my personal information.

Left thumb impression of
Kashibai Kom Mayappa Devur.

File

Sd/- M.M.Nadkarni,
Civil Judge, Sr.Dn.,
31-10-1950.

Civil Suit No. 690 of 1950.

Ex. 35.

In the Court of the Civil Judge, Sr.Dn.
Bijapur.

1. Shivaraya Rayappp Devur of Benakanahalli,
Taluka Indi. .....Plff.

Vs.

1. The Bombay Province and six others.... Defts.

Claim Rs 237-8-0.

Herein the defendant No.7 submits his written statement as follows:-

1. The plaintiff's suit is false and is denied in toto.

2. The factum of adoption of plaintiff by defendant No.4 is denied. Deft No.4 was prohinited from her husband from adopting anybody. Hence even if the adoption is proved it is illegal. The surrender dated 9-1-1931 is voluntary and is binding on the plff. The allegations in para 3 of the plaint contrary to these facts are false. The surrender was not brought about throughk undue influence and fraud by the husband of deft 2.

3. The sale-deed, dated 20-6-1934, by defendant No.4 to defendant No.5's father, was for her husband's debt. Hence it is binding on the plff. The sale-deed by deft 5's father and deft No.5 to defendant No.6 on 7-6-1935 is also binding on the plaintiff.

4. The decree in Bijapur Civil suit No. 434 of 1945 is binding on the plaintiff. Since that decree either the plff or any of the defendants from 2 to 4 have not been in possession of the land at any time. Hence the suit is not in time.

5. Deft No.6 was entitled to get tagai loan for the improvement of the land as he was occupying the land. The allegation in para 7 of the plaint are false and are denied.

6. Defendants 2,3 and 4 have not done anything to save the land from forfeiture even though notices were served on them. Hence the plaintiff cannot challenge the forfeiture order now.

7. The allegations in paras 9,10 and 11 of the plaint are denied. Defendant No.4 had salable interest in the land.

8. Defendant No.7 has deposited the amount ord red by the Revenue authorities with a view to get the suit land transferred in his name. Defendant No.7 is bonafide transfer for value without notice. So his interest cannot be disturbed. The forfeiture order is binding on the plaintiff.

9. This defendant adoptes all other contentions to be put in by the State which are not contrary to the contentions raised in this written statement.

10. This defendant is unnecessarily impleaded. Compensatory costs may be awarded to him.

For these reasons the suit may be dismissed with costs.

16-4-1951. Sd/- Gurappa Shivappa Bisnal.

Herein, I, Gurappa Sivappa Bisnal of Konutagi, now residing at Bijapur; solemnly affirm that what is stated above is known to me by documents and information received and personal knowledge and believed by me to be true.

Sd/- Gurappa Shivappa Bisnal.

16-4-1951. Sd/- A.S.Patil

Pleader.

Read and recorded.

Sd/- M.M.Badakarni.

Civil Judge,Sr.Dn.

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No. 9833.

Office of the
Remembrancer of Legal Affairs,
Bombay Castle(Bombay,1), 12th June 1952.

Subject: Proposal for Compromise in Bijapur Civil Suit No. 690/50.

---

MEMORANDUM.

With reference to his letter No. 413 of 1952, dated the 20th May 1952, on the above subject, the District Government Pleader is requested to inform whether the proposed compromise would be signed by all the parties who have put in appearences in the suit, including Deft.No.7. The District Government Pleader, is further, requested to prepare a draft of the proposed compromise in such a way that the interest of every party concerned may be dealt with and settled so that there may be a final decision in the case, and submit that draft for approval to this office.

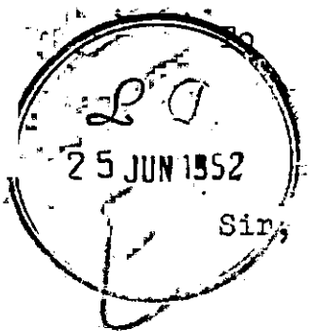
O/C for Remembrancer of Legal Affairs.

To

The District Government Pleader, Bijapur.

No. 544 of 1952.
Office of the D.G.P.Bijapur.

81




The Remembrancer of Legal Affairs,
Secretariat Bombay.

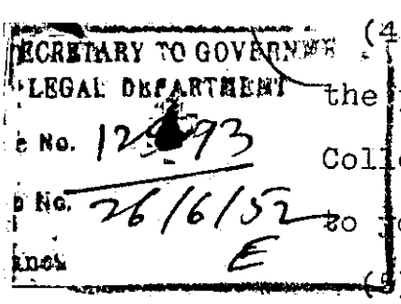
Subject:- Bijapur Civil Suit No. 690 of 1950.

Sir,

With reference to your memorandum No. 9833 of 12-6-52, I have the honour to state that I consulted on 16-6-1952 Shri A.S.Patil pleader for defendant No.7 as to whether deft No.7 would agree to the compromise. He stated that he would consult his client. To-day he ~~has~~ communicated to me that his client has not seen him.

(2) Shri S.M.Deshmukh pleader for plff stated to me yesterday that defendant No.7 may not possibly agree and that if Government is serious about the conditions in your memorandum to me, the suit may proceed.

(3) In view of this, it does not appear that the proposed compromise would be in a position to be signed by all the parties including deft No.7. Hence I have not prepared a draft of the proposed compromise on the lines suggested by you in your memorandum No. 9833.




(4) In view of the facts stated in Paras 1,2 and 3 above, the plff's application to the Collector referred to in the Collector's report No. T.A.G.S.R. 2904 of 5-4-1952 addressed to you may be filed.

(5) The suit is fixed for hearing on 23-7-1952 and I may be informed to proceed with the hearing of the suit.

A

Yours faithfully,

District Govt.Pleader,Bijapur

A.D
Pl. see the letter above. In view of the above letter, the Govt. may be informed to proceed with the case.
717
Solicitor (Asst.)

Mr. D.G.P. may be informed to proceed with the case as there is no prospect of a proper compromise
Bkk
6/7

No. 11702 — 83

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 15th July 1952.

Subject: Bijapur Civil Suit No.690/50.

MEMORANDUM:

With reference to his letter No.544/1952 dated nil, the District Government Pleader, Bijapur is informed that he may proceed with the case, as there are no prospects of a proper compromise.

S K Kanekar
O/C For Remembrancer of Legal Affairs.

To
The District Government Pleader,
Bijapur.

K[illegible]/12.7

Received 15/7

Submitted
14/7
Solicitor (Mis)

Subject - after issue No action is req. on this
F-h ni S. Byington 2/5-2

24/10

Son (cont) 24-C

2/57

No. 142 of 1953.
20-1-1953.

85

To

The Collector of Bijapur..

Subject:- Bijapur C.S.No.690/1950.
1.Shivayya Devur plff.
Vs.
1. The Bombay State
& others. defts.

Sir,

Judgment in the above suit was delivered today. I have sent herewith an extract of para 30 from the same.

(2). I need not mention the case of the plff and that of the defendant as they can be gathered from the brief sent to me by the Remembrancer of Legal Affairs( copy of which also must have been received by you). The Court has held that plff has proved that deft No.4 adopted him with due ceremonies, that deft No.4 had not been prohibitted by her husband from adopting, that she had power to pass sale deed on 20-6-1934 only with respect to her own life-interest in the suit land, that the said sale deed was passed by deft No.4 for paying debt of her husband and that ~~this~~ thus plff is entitled to a decree in terms of the final order as per extract sent herewith.

(3). I am of opinion that the decision of the Civil Court should be ~~acquised~~ acquiesced in and not appealed against.

(4). I have today applied for certified copies of Decree and Judgment and I will forward the same to you on their being received by me.

I will obtain uncertified copies of the Judgment and I will forward one copy to you and another copy to the Remembrancer of Legal Affairs so that you and the Remembrancer of Legal Affairs may consider if you should agree with me in my view of an appeal not being preferred as stated by me in para 3 above.

THE SECRETARY TO GOVERNMENT
LEGAL DEPARTMENT
File No. 205
Dt. 27/1/53
E

20-20

I am forwarding a copy of this report to the Remembrancer of Legal Affairs Bombay.

Yours faithfully

Ahusadar

District Government Pleader,
Bijapur.

No. 143 of 1953.
20-1-1953.

Copy respectfully forwarded to the Remembrancer of Legal Affairs, Bombay No.1, along with ~~the~~ an extract of ~~of~~ the final order of the Judgment of thesuit.

LEGAL DEPARTMENT

24 JAN 1953

Ahusadar

District Government Pleader,
Bijapur.

Submitted

C.S. no. 690/50 has been decided against the Govt. The D.S.P is not in favour of setting an appeal. A copy of the judgment is not sent.

Nkv
23/1

Asst(H) Call for copy of the judgt.

23/1

Received on 10-6-1951.

Registered on 16-6-1950.

Decided on

Duration-

In the Court of theCivil Judge,Senior Division,

At Bijapur.

Regular Civil Suit No.690/1950.

1. Shivaraya Rayappa Devur, caste Kurbar, age 30, occupation agriculture residence Benakanhalli, Taluka Indi. plff.

Vs.

1. The Bombay Province(State).

2. Parvatewwa wife of Hennappa Walikar caste Kurbar, age 40, occupation house hold work, residence Honnutagi, Taluka Bijapur.

3. Yellawa w/o Kallappa Pujari, .. case Kurbar, age 35, occupation house hold work residence Averi, Taluka Bijapur.

4. Kashibai widow of Rayappa Devur, age 55, caste Kurbar, occupation household work residence Bijapur District Bijapur.

5. Madivalappa Shivagowda Bilgi, caste Lingayat, age 35, Occupation agriculture Residence Honnutagi, taluka Bijapur.

6. Channappa Shivappa Bisnal, caste Lingayat, age 43, occupation agriculture, residence Honnutagi Taluka Bijapur.

7. Gurappa Shivappa Bisnal,caste Lingayat, age 35, occupation agriculture residence Honnutagi, Taluka Bijapur.

Claim Rs. 237-8-0.

X X X X

30. ORDER.

It is declared that the alienation made of the reversionary interest in the suit land by the Malki Patra Exh.76 by defendant No.4 in favour of defendants Nos. 2 and 3 is not binding on the plaintiff, and also that the sale made by defendant No.4 in favour of defendant No.5's father by the sale-deed Exh.77 and the

subsequent sale made by defendant No.5 and his father in favour of defendant No. 6 on 7-6-1945 are not binding on the plaintiff to the extent of the said reversionary interest.

It is also declared that the plaintiff is not liable to satisfy the Tagai loan borrowed by defendant No.6 from defendant No.1 in 1938.

It is further declared that the plaintiff is entitled to the suit land by reversion after defendant No.4's death and that the order of forfeiture made by the District Deputy Collector on 15-7-1945 is not binding on the plaintiff to the extent of his said reversionary interest in the suit land.

The plaintiff to recover possession of the suit land from defendants Nos 1,6 and 7 after defendant No.4's death.

Defendants Nos. 1,6 and 7 to pay the plaintiff half his costs of the suit. The plaintiff to bear the other half of his costs. All the defendants to bear their costs.

20-1-1953.

Sd. M.M.Nadkarni.
Civil Judge,Sr.Dn.

No. 2057/E

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 31st January 1953.

Subject:-C.S. No. 690/50.

MEMORANDUM.

With reference to his endorsement No. 143 dated the 20th January 1953, on the subject noted above, the District Government Pleader, Bijapur is requested to send ~~the~~ a copy of judgment to this office, immediately.

F.C. sd/-
for Remembrancer of Legal Affairs.

To

The District Government Pleader,
Bijapur.

BM.
30.1.

Submitted after issue
draft copy of proof

dkw
2/2

Supdt AB
2/2/53

2/57

No. 211 of 1953.
Date:- 3-2-1953

9k
107

To

The Collector of Bijapur.

Subject:-Bijapur C.S.No.690/1950.
1. Shivaraya Rayappa Devur plff.
Vs.
1.The Bombay Province
and another. defts.

Sir,

In continuation of my No.142 of 20-1-1953 I have the honour to send herewith uncertified copy of Judgment in the above suit.

I have already reported to you under my No.142 of 1953 that I am of opinion that the decision of the Civil Court should not be appealed against.

The period of limitation for filing an appeal expires on _____.

2. I am sending a copy of this report to Remembrancer of Legal Affairs,Bombay, along with an uncertified copy of Judgment.

3. I therefore request you to consider if you should agree with me in my view of an appeal not being preferred You may kindly forward your report to Remembrancer of Legal Affairs very early so that Remebrancer of Legal Affairs may instruct me as to whether I should or should not file an appeal.

4. The certified copies of Judgment and Decree are being retained by me so that in case R.L.A. instructs me not to prefer an appeal I will forward the said copies to you for being filed. If however the R.L.A. instructs me to file an appeal I will do so and produce the said certified copies in Court.

Yours faithfully

Sd.A.C.Angadi.

District Govt.Pleader,Bijapur.

No. 212 of 1953.
Date:- 3.2.1953

Copy respectfully forwarded to the Remembrancer of Legal Affairs, Bombay No.1, along with an uncertified copy of Judgment in the above appeal for favour of issuing to me such instructions in the matter of preferring or not preferring an appeal as deemed fit.

Abusaad
District Govt. Pleader, Bijapur.

LEGAL DEPARTMENT
4 FEB 1953.

THE SECRETARY TO GOVERNMENT
LEGAL DEPARTMENT
File No. 2989
Case No. 51/2/53 E
Subject

Submitted.
Pl. see DG.P's letter
over leaf.
C.S.No. 690/50 has been
decided against the Govt. on 20.1.53
pp. 9-31 post.
A copy of the judgment is received
in the DG.P's office for orders.
The DG.P is not in favour of
filing an appeal. Last date
for filing an appeal is 20.2.53.
Sd
5/2

Sol.(M) No person who would be
affected if Govt. appeal. He would
have possession after the death of his
widow. Dept. No 4. Govt has already
received R. Tagare and P. Chowdhary
R. Circumstances there is no reason
why Govt should file any appeal & withdraw
Sd 20/2/53

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Received on 10-6-1950

Registered on 16-6-1950.

Decided on 20-1-1953.

Duration 2y. 7m. 4days.

IN THE COURT OF THE CIVIL JUDGE SENIOR DIVISION,

AT BIJAPUR.

Pleaders. Exh.

Regular Civil Suit No. 690 of 1950.

Shri K.R.Deshpande. 1. Shivaraya Rayappa Devur, caste Kurbar, age 30, occupation agriculture residence Benakanhalli, taluka Indi. .... .... Plaintiff

against.

1. The Bombay Province (State).
2. Parvatewwa wife of Honnappa Walikar, caste Kurbar, age 40, occupation household work, residence Honnutagi, taluka Bijapur.
3. Yellawa w/o Kallappa Pujari, caste Kurbar, age 35, occupation household work residence Averi, taluka Bijapur.
4. Kashibai-widow of Rayappa Devur, age 55, caste Kurbar, occupation household work Residence Bijapur District Bijapur.
5. Madivalappa Shivagowda Bilgi, caste Lingayat, age 35, occupation agriculture Residence Honnutagi, taluka Bijapur.
6. Channappa Shivappa Bisnal, caste Lingayat, age 43, occupation agriculture Residence Honnutgi, taluka Bijapur.

7. Gurappa Shivappa Bisnal, caste Lingayat, age 35, Occupation agriculture residence Honnutagi, taluka Bijapur.

Claim Rs. 237-8-0.

JUDGMENT.

The plaintiff sues:-

(1) to obtain a declaration as follows:-

(i) that the alienations made of the suit land by the Malki Patra dated 9-1-1931 passed by defendant No.4 in favour of defendants Nos. 2 and 3, the sale deed dated 20-6-1934 passed by defendant No.4 in favour of defendant No.5's father, and the subsequent sale deed passed by defendant No.5 and his father in favour of defendant No.6 are void and not binding upon him; (ii) that the hypothecation made of the suit land by defendant No.6 for repayment of a Tagai loan borrowed from Government is not binding on him; (iii) that he is not liable to satisfy the said Tagai loan; and (iv) that the forfeiture made of the suit land by the District Deputy Collector for nonpayment of the Tagai loan is not binding upon him; and

(2) to recover possession of the suit land from the defendants with future mesne profits and costs of the suit.

The plaintiff states as follows:- The suit land Survey No. 269 and a house at Honnutgi village belonged to one Rayappa Satteppa Devur who died suddenly of cholera in 1930. Defendants Nos. 2 and 3 are his daughters by a predeceased wife. Defendant No.4 is his widow. She inherited the said land and house from him as his heir. Defendant No.2's husband Honnappa obtained a document called Malki Patra dated 9-1-1931 from defendant No.4 by undue influence and fraud.

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The document contains some false recitals. By that document defendant No.4 purported to surrender the suit land only to defendants Nos. 2 and 3 subject to her right of enjoying its income till her death. The surrender purported to be made by that document was partial because it did not include the house belonging to her husband Rayappa Devur, and also becaus she reserved the right to enjoy the income of the suit land till her death. Defendant No.4 passed a sale deed dated 20-6-1934 in favour of defendant No.5's father Shivgouda Bilgi in respect of the suit land Survey No. 269 for satisfying the debt alleged to be owed by her husband to him. Defendant No.5 and his father passed a sale deed dated 7-6-1935 in defendant No.6's favour in respect of the suit land. Defendants Nos. 2 and 3 brought Suit No.434 of 1935 against defendants Nos. 4 and 6 and defendant No.5's father to obtain a declaration of their title to the suit land. In that suit it was held that the Malki Patra dated 9-1-1931 passed by defendant No.4 in favour of defendants Nos. 2 and 3 was inoperative as a deed of surrender but operated as a deed of gift. It was declared in that suit that defendants Nos. 2 and 3 were the owners of the suit land Survey No. 269 and that the alienations made thereof to defendant No.5's father and defendant No.6 were not binding on defendants Nos. 2 and 3. After the abovesuit was thus decided, defendant No.6 made an application dated 14-3-1938 to the District Deputy Collector for a Tagai loan of Rs.200/- under the Land Improvement Loans Act for the purpose of erecting a Bund on the suit land Survey No. 269. It appears that the District Deputy Collector sanctioned the loan to defendant No.6 in March 1938. Defendants Nos. 2 and 3 immediately made an application to the Mamlatdar bringing to his notice the decree obtained by them in the aforesaid Suit No. 434 of 1935 establishing their title to the suit land against defendants Nos. 4 and 6 and defendant No.5's father. Still the Mamlatdar advanced Rs.150/- to defendant No.6 on the security of the suit land. In April 1938,

defendants Nos. 2 and 3 made another application to the District Deputy Collector that defendant No.6 should not be granted any loan as he was not the owner of the suit land. With the application they produced a copy of the decree in the aforesaid suit before the District Deputy Collector. It is not known what orders are made on the application. Defendant No.6 committed default in paying the loan. The District Deputy Collector issued notices to defendants Nos. 2 and 3 that the suit land would be forfeited for recovery of the loan. They contended that their right title and interest in the land could not be forfeited. Still the land was forfeited to the Government on 15-7-1945. On 29-5-1947 defendant No.4 adopted the plaintiff to her deceased husband. The adoption ceremony was performed in Shiddeshwar Temple at Bijapur. A photograph was taken at the time of the adoption ceremony and an adoption-deed was also executed. In virtue of the adoption the plaintiff has become entitled to the possession of the suit land as owner. The alienation made of the suit land by defendant No.4 in favour of defendants Nos. 2 and 3 by the Malki Patra dated 9-1-1931 was binding on herself as a gift as decided in the aforesaid Suit No. 434 of 1935. But it is not binding on the plaintiff and is void as against him. As the Malki Patra was binding on defendant No.4 at the time when she passed the sale deed dated 20-6-1934 in favour of defendant No.5's father, she had no title to pass the sale deed. That sale-deed and the subsequent sale deed dated 7-6-1935 passed by defendant No.5's father in favour of defendant No.6 are therefore void and not binding on the plaintiff. Government granted the Tagai loan to defendant No.6 who had no interest in the suit land at any time. The land cannot, therefore be forfeited for defendant No.6's default in paying the loan. As the alienation made by defendant No.4 in favour of defendants Nos. 2 and 3 by the Malki Patra dated 9-1-1931 is not binding on the plaintiff, he is entitled to possession of the suit land. Defendant No. 7 is defendant No.6's brother. It is learnt that in 1947 he applied to the Collector to cancel the order of forfeiture of the suit

land, and tendered the amount of the Tagai loan borrowed by defendant No.6 from Government. Hence he is also made a party to the suit.

2. By the written statement Exh. 40 datendant No.1 contends as follows:- The factum and validity of the plaintiff's alleged adoption are denied. As recited by the Malki Patra passed by defendant No.4 in favour of defendants Nos. 2 and 3 she was prohibited by her husband from making any adoption. The plaintiff's adoption is not, therefore, valid. The allegation that the Malki Patra was brought about by undue influence and fraud is denied. Defendant No.4 sold the suit land to defendant No.5's father for satisfying her husband's debt before she adopted the plaintiff. That sale and the subsequent sale made by defendant No.5's father to defendant No.6 and the order of forfeiture made against defendant No.6 are all, therefore, binding on the plaintiff. The plaintiff has no title to the suit land and is not entitled to its possession.

3. By the written statements Exhs. 20, 13 and 24, defendants Nos. 2,3 and 4 fully supported the plaintiff's suit. They were absent at the time of framing the issues. Hence the suit was proceeded with ex parte against them.

4. Defendant Nos. 5 and 6 were absent though duly served with summonses. The suit was therefore, proceeded with ex parte against them.

5. By the written statement Exh. 35 defendant No.7 raised contentions similar to those raised by defendant No.1 in its written statement Exh. 40. He and his pleader were absent at the time of framing the issues. The suit was, therefore, proceeded with ex parte against him. It is not, therefore, necessary to set out his pleading in detail here.

6. **ISSUES.**

(1) Whether the plaintiff proves that defendant No.4 adopted him with due ceremonies to her husband

on 29-5-1947 ?

(2) Whether defendant No.4 had been prohibited by her husband from making any adoption ?

(3) Whether on 20-6-1934 defendant No.4 had power to pass the sale deed in favour of defendant No.5's father ?

(4) If so, whether defendant No.1 proves that the said sale deed was passed for paying a debt due from defendant No.4's husband ? Did defendant No.5's father make bona fide inquiries and believe in good faith that the sale deed was being passed for paying defendant No.4's husband's debt ?

(5) What decree ?

7. FINDINGS.

(1) Yes.
(2) No.
(3) Yes, with respect to her own life interest only in the suit land .
(4) Yes.
(5) As per order below.

Reasons.

8. This is a suit to recover possession of the land Survey No. 269 at Honnutgi. That land and a house which is not the subject-matter of this suit belonged to one Rayappa Devur who was an inhabitant of the said village. Defendants Nos. 2 and 3 are his daughters by a wife named Satawa. After that wife's death, he married defendant No.4 by whom he had no issue. He died on 17-10-1930. See the extract of the Deaths Register Exh. 72. Defendant No.4 inherited the suit land and the aforesaid house from him as his widow.

9. At the time of Rayappa Devur's death both his daughters defendants Nos. 2 and 3 were minors. They seem to have been married during his lifetime. Within three months after his death, defendant No.4 passed the document called Malki Patra Exh. 76 dated 9-1-1931 in favour of defendants Nos. 2 and 3 both of whom were then minors. In that document defendant No.2's husband Honnappa Walikar is shown as her guardian, and defendant No.4 herself is shown as defendant No.3's guardian. It will thus bee seen that it was defendant

No.2's husband Honnappa Walikar who got the document executed by defendant No.4 who is an illiterate and ignorant woman. By that document she surrendered the suit land Survey No. 269 to defendants Nos. 2 and 3 constituting them full owners thereof, but stipulating that she would retain possession of the land during her lifetime for her maintenance. The document contains a recital that her husband directed that defendants Nos. 2 and 3 should become owners of his property, and forbade her to make any adoption. In the plaint it is alleged that defendant No.2's husband Honnappa Walikar obtained the document from defendant No.4 by undue influence and fraud. The allegation is denied by defendant No.1 in its written statement. Defendant No.4 who is examined as a witness for the plaintiff says that the document was taken from her by defendant No.2's husband by fraud and that her husband did not prohibit her from making any adoption. There is, however, no evidence to show that defendant No.4 did not intend to pass a surrender deed conveying the suit land to defendants Nos. 2 and 3, and that defendant No.2's husband took her thumbmark on the Malki Patra Exh. 76 misrepresenting its nature to her. There is also no evidence to show that at the time when defendant No.4 made her thumbmark on the document, she knew that it contained the recital that she was forbidden by her husband to make any adoption. Though it cannot be said that the Malki Patra Exh. 76 as a whole was taken by defendant No.2's husband from defendant No.4 by fraud and undue influence , it appears that the recital that she was forbidden by her husband to make any adoption was inserted therein without her knowledge.

10. On 2-2-1934, defendant No.4 sent the notices Exhs. 91 and 92 to defendants Nos. 2 and 3 by Registered Post. The notices being refused by them, were returned to defendant No.4. In those notices a reference is made to the bond Exh.96 dated 12-7-1930 passed by defendant No.4's

husband Rayappa Devur in favour of defendant No.5's father and a Promissory Note dated 2-8-1931 passed by herself in favour of the same creditor. Defendant No.4 stated in those notices that as she had no means to pay the debts due on the said bond and Promissory Note she would sell the suit land Survey No. 269 for satisfying the debts. On 20-6-1934, defendant No.4 passed the sale deed Exh. 77 in favour of defendant No.5's father Shivagouda Bilgi conveying the suit land to him for the amount of Rs. 300/- said to be owed to him on the bond Exh. 96 passed by her husband in his favour.

11. By a sale deed dated 7-6-1935 defendant No.5 and his father Shivagouda Bilgi sold the suit land to defendant No.6.

12. On 22-10-1935 defendants Nos. 2 and 3 brought Suit No. 434 of 1935 against defendant No.5's father Shivagouda Bilgi and defendants Nos. 4 and 6 for a declaration that they were the owners of the suit land in virtue of the Malki Patra Exh. 76 dated 9-1-1931 passed by defendant No.4 in their favour, and that the alienations made of the land by the subsequent sale deed Exh. 77 dated 20-6-1934 passed by defendant No.4 in favour of defendant No.5's father Shivagouda Bilgi and the sale deed dated 7-6-1935 passed by defendant No.5 and his father in favour of defendant No.6 were not binding on them. During the pendency of that suit defendant No.5's father died and defendant No.5 was brought on record as his legal representative. In that suit defendant No.4 engaged Mr. Sajjan as her pleader by the Vakil Patra Exh. 93, and filed the written statement Exh. 94. In that written statement she alleged that defendant No.2's husband took the Malki Patra Exh. 76 from her by coercion and fraud; that she had not been forbidden by her husband to make any adoption; that she gave the notices Exhs. 91 and 92 to defendants Nos. 2 and 3 before she sold the suit land to defendant No.5's father by the sale deed Exh. 77; and that she sold the land to defendant No.5's father to discharge the debt owed by her husband to him on the bond Exh. 96. With the list Exh. 90 the two notices Exhs. 91

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and 92 were produced in evidence in that suit on behalf of defendant No.4. That suit was decreed in favour of defendants Nos. 2 and 3 on 4-1-1937. Exh. 73 and 74 are the Judgment and decree therein. It was held in that suit that the Malki Patra Exh. 76 was inoperative as a deed of surrender as the surrender made by defendant No.4 by thereby was only of a part of the estate inherited by her from her husband; that it was however, operative as a gift deed making a valid gift of the suit land to defendants Nos. 2 and 3; that by the notices Exhs. 91 and 92 defendant No.4 could not revoke the gift made by her by the Malki Patra Exh. 76 in favour of defendants Nos. 2 and 3; and that by the subsequent sale deed Exh. 77 passed by defendant No.4, defendant No.5's father got no title to the suit land even though it might have been passed for the purpose of discharging the debt owed by her husband to him and was; therefore, for legal necessity.

13. The aforesaid Suit No. 434 of 1935 was decided on 4-1-1937 declaring that defendants No.2 and 3 were the owners of the suit land and that the alienations made thereof by the sale deed Exh. 77 passed by defendant No.4 in favour of defendant No.5's father and the subsequent sale deed passed by defendant No.5 and his father in favour of defendant No.6 were not binding on defendants Nos. 2 and 3. The decision in that suit is not, however, binding on the plaintiff and defendant No.1 who were not parties thereto, and does not operate as res judicata in this suit, because the Civil Judge Junior Division who decided that suit was not competentato try this suit.

14. In the plaint it is stated that after the afresaid suit was decided, defendant No.6 made an application dated 14-3-1938 to the District Deputy Collector for a Tagai loan of Rs. 200/- under the Land Improvement Loans Act for the purpose of erecting a Bund on the suit land; that the District Deputy Collector sanctioned the loan in March 1938;

that defendants Nos. 2 and 3 immediately brought the decree obtained by them in the aforesaid suit to the notice of the District Deputy Collector and the Mamlatdar; that still Rs. 150/- was advanced to defendant No.6 on the security of the suit land; that defendant No.6 having committed default in paying the loan, the District Deputy Collector issued notices to defendants Nos. 2 and 3 that the suit land would be forfeited; that defendantsNos. 2 and 3 then contended before him that their right title and interest in the land could not be forfeited; and that yet an order was made on 15-7-1946 forfeiting the land to Government. It is also stated in the plaint that in 1947 defendant No.7 applied to the Collector to cancel the order of forfeiture, tendering the amount of the Tagai loan borrowed by defendant No.6 from the Government. These averments in the plaint are not denied by defendant No.1 in its written statement. I, therefore, take these averments as admitted by defendant No.1 to be true. The extract of the Record of Rights Exh. 5 shows that in 1948-49 and 1949-50 defendant No.7 cultivated the suit land on behalf of Government. The suit land, therefore, seems to be in the possession of Government and defendant No.7 at present.

15. I shall now proceed to discuss issues Nos. 3 and 4. I have stated above that defendant No.4 sold the suit land to defendant No.5's father by the sale deed Exh. 77 dated 20-6-1934 for the purpose of satisfying the debt owed by her husband to him on the bond Exh. 96 dated 12-7-1930. The bond Exh. 96 is proved by the evidence of witness Paragondappa Shidlingappa Bagali Ex. 95 who has attested it. His evidence also shows that defendant No.5's father advanced a loan of Rs. 200/- to defendant No.4's husband on the bond. It appears that at the date of the sale deed Exh. 77 Rs. 300/- was due to defendant No.5's father on the bond Exh. 96. To discharge that debt defendant No.4 passed that sale deed in his

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favour. Defendant No.4 in her deposition before the Court says that defendant No.5's father took the sale-deed Exh. 77 from her by fraud. There is no evidence in support of the allegation. In the written statement Exh. 94 which defendant No.4 filed in the aforesaid Suit No. 434 of 1935, she admitted that she passed the sale deed for the purpose of discharging the debt owed by her husband to defendant No.5's father on the bond Exh. 96. She did not contend therein that the sale deed was vitiated by fraud etc. That written statement was filed on her behalf in that suit by her pleader Mr.Sajjan who is examined for defendant No.1 at Exh.89. She now alleges that she did not engage Mr. Sajjan in that suit and that her thumbmarks on the Vakil Patra and written statement Exhs. 93 and 94 filed in that suit were taken by defendant No.5's father by fraud. Mr.Sajjan Exh. 89 denies her allegation and says that she engaged him in that suit and instructed him for drafting and filing the written statement. I believe him. I hold that the sale deed Exh. 77 was passed by defendant No.4 for the purpose of discharging the debt owed by her husband to defendant No.5's father on the bond Exh. 96. On behalf of the plaintiff it is urged that the mere existence of the debt owed by defendant No.4's husband on the bond Exh. 96 was not sufficient to justify her to pass the sale deed in favour of defendant No.5's father, and that there should have been some pressure on her to pay the debt and no other means to pay it to justify her to pass the sale deed. In support of the argument the plaintiff's learned pleader relies on " Lakhmi Singh v. Mahendra Singh" (A.I.R. 1949 Allahabad 501). That was a case of a suit to set aside an alienation made by the managers of a joint family for discharging a family debt The ruling in that case can have no application to an

alienation made by a widow to discharge a debt owed by her husband. The payment of the husband's debt is an act which is essential and obligatory. To justify an alienation for that purpose it is not necessary to show any benefit to the estate or prove any pressure on the estate. She Mulla's Hindu Law (Eleventh Edition, 1952) Section 181A at Pages 183 to 187. I, therefore, hold that there was a justifying necessity to pass the sale deed Exh. 77 in favour of defendant No.5's father. But the question is whether at the date of the sale-deed, defendant No.4 had any right in the suit land entitling her to pass the sale deed even for a purpose of justifying necessity.

16. On behalf of the plaintiff it is urged that because defendant No.4 had divested herself of ownership of the suit land by the Malki Patra Exhi 76 dated 9-1-1931 passed by her in favour of defendants Nos. 2 and 3 she was not entitled to sell the land again to defendant No.5's father by the subsequent sale deed Exh. 77 dated 20-6-1934. But in the plaint it is alleged that the Malki Patra Exh. 76 was obtained from defendant No.4 by defendant No.2's husband Monnappa Walikar by fraud and undue influence. That allegation is, however, expressly denied by defendant No.1 in its written statement. As I have pointed out above, there is no evidence to prove that the Malki Patra Exh. 76 as a whole was taken from defendant No.4 by fraud and undue influence, though it appears that the recital that she was forbiddden by her husband to make any adoption was inserted therein without her knowledge. I hold that the Malki Patra is not vitiated by fraud and undue influence. By the Malki Patra defendant No.4 purported to surrender the suit land to defendants Nos. 2 and 3 who were the presumptive next reversioners to her husband's estate. But the suit land was not the only property inherited by defendant No.4 from her husband. She had inherited that

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land and a house from her husband and was in possession of the same at the time when she passed the Malki Patra. The surrender which she purported to make by the Malki Patra was, therefore of only a part of her husband's estate and not the whole of it. The surrender was, therefore invalid and inoperative. Still the question arises whether the conveyance made by the Malki Patra was valid as a gift. A gift by a widow of a part of her husband's estate is not binding on the actual reversioner or the adopted son, and may be avoided by the adopted son after adoption, or by the actual reversioner after the widow's death. See Mulla's Hindu Law Section 183 (4) at Page 198. Such gift is not, however, absolutely void. Though it may not be binding on the actual reversioner or the adopted son, it is nevertheless binding on the widow so as to pass her own interest to the donee. Even as regards the reversioners or the adopted son, the gift is not void but only voidable at their option. They may affirm it or treat it as a nullity. Until they exercise their right of election to avoid the gift, it would remain quite valid. See Mulla's Hindu Law, Section 185 at pages 200 and 201.

17. The gift made by defendant No.4 by the Malki Patra Exh. 76 was, therefore perfectly binding on herself. But what was it that she gifted by the Malki Patra ? She did not make an unqualified gift of the suit land by it. She reserved a life interest in the land for herself, in virtue of which, she was to remain in possession thereof till her death for her maintenance. Subject to her said right of retaining possession for her life, she gifted the land to defendants Nos. 2 and 3 who were to get possession thereof after her death. After making

the Malki Patra, she had yet a life interest in the suit land which she could alienate to others for a purpose of justifying necessity. But she had no right to alienate the reversionary right in the land to others even for a purpose of justifying necessity, as she had divested herself of the same by making a gift of it to defendants Nos. 2 and 3 by the Malki Patra.

18. At the time when defendant No.4 passed the sale-deed Exh. 77 dated 20-6-1934 in favour of defendant No.5's father, the position, therefore, was this:- By the Malki Patra Exh. 76 she had divested herself of the power to alienate the reversionary interest in the suit land, but she was yet possessed of a life interest in the land which she was entitled to alienate for a purpose of justifying necessity. It is true that the gift made of the reversionary interest in the land by the Malki Patra Exh. 76 was voidable at the option of the next reversioners or an adopted son. But at the date of the sale deed Exh. 77 defendant No.4 had made no adoption. So there was then no question of the gift made by the Malki Patra being repudiated by an adopted son. The presumptive next reversioners at the time were defendants Nos. 2 and 3 themselves in whose favour the gift had been made by the Malki Patra. On their behalf the gift was never repudiated. It is true that before passing the sale deed Exh. 77 in favour of defendant No.5's father, defendant No.4 served the notices Exhs. 91 and 92 on defendants Nos. 2 and 3 saying that as she had no means to discharge the debt owed by her husband to defendant No 5is father on the bond Exh. 96, she would sell the suit land to him. But by such notices the gift already made by the Malki Patra in favour of defendants Nos. 2 and 3 could not be revoked. Under the circumstances, I hold that the reversionary interest in the suit land that had been already gifted to defendants Nos. 2 and 3 by the Malki Patra, could not be again conveyed

by defendant No.4 to defendant No.5's father by the sale deed Exh. 77. Defendant No.5's father got no title to the reversionary interest in the land by virtue of that sale deed. The case as regards the life interest which defendant No.4 reserved for herself under the Kalki Patra, however, stands on a different footing. As observed above, she was entitled to alienate the same for a purpose of justifying necessity. She passed the sale deed Exh. 77 for such a purpose, namely, for discharging the debt owed by her husband on the bond Exh. 96. By that sale deed, defendant No.5's father therefore acquired defendant No.4's life interest in the land, viz., the right to hold possession of the land and enjoy its income during the term of defendant No.4's natural life. In the aforesaid suit No. 434 of 1935 it was held that defendant No.5's father acquired no right whatever in the suit land by the sale deed Exh. 77. With great respect to the learned Judge who decided that suit, I do not agree with that view. I have pointed out above that the decision in that suit does not operate as res judicata in this suit.

19. Defendant No.5 and his father passed a sale deed dated 7-6-1935 in respect of the suit land in favour of defendant No.6. By that sale deed, defendant No.6 acquired only such interest in the suit land as defendant No.5's father possessed, namely, the right to hold the land and enjoy its income during the term of defendant No.4's natural life.

20. In 1938, the Government advanced a Tagai loan to defendant No.6 on the hypothecation of the suit land for the purpose of erecting a Bund thereon.

As he was entitled to hold and enjoy the land for the term of defendant No.4's life only, the hypothecation made by him was effective to the extent of only his interest in the land. Defendant No.6 committed default in paying the loan and the District Deputy Collector made an order in 1945 forfeiting the suit land. The question arises to what extent the order of forfeiture would be binding on the plaintiff and his interest in the land.

21. Section 7(1) of the Land Improvement Loans Act, 1883, provides that a Tagai loan may be recovered by the Collector, in the following modes, namely:-

> "(a) from the borrower ..... .... ;
> (b) for his surety (if any) ... .... ;
> (c) Out of the land for the benefit of which the loan has been granted-- as if they were arrears of land revenue due in respect of that land;
> (d) out of the property comprised in the collateral security ( if any)-- according to the procedure for the realization of land revenue by the sale of immoveable property other than the land on which that revenue is due."

Under Clauses (a) and (b) above, the Tagai loan advanced to defendant No.6 may be recovered from him and his surety, if any, but not from anybody else. It appears that defendant No.6 hypothecated the suit land itself to secure repayment of the loan borrowed to effect improvement thereon. No other property was charged by way of collateral security for repaying the loan. There is no property comprised in any collateral security within the meaning of Clause (d) above. Moreover, under that Clause the amount of the Tagai loan can be recovered by the sale of the property comprised in the collateral security and not by its forfeiture. Clause (d) is not, therefore, applicable to this case and the Government does not seem to have taken any action thereunder.

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The order of forfeiture of the suit land seems to have been made in this case under Clause (c) which is subject to the following proviso :-

> 'Provided that no proceeding in respect of any land under Clause (c) shall affect any interest in that land which existed before the date of the Order granting the loan, other than the interest of the borrower ...
> ... ...

According to the above proviso the order of forfeiture made in this case does not affect any interest in the suit land other than that of defendant No.6 who borrowed the Tagai loan. I have pointed out above that defendant No.6 was entitled to hold and enjoy the suit land for the term of defendant No.4's natural life. Hence the order of forfeiture made in this case seems to be valid only to that extent.

22. As I have stated above, after the order of forfeiture was made, defendant No.7 seems to have tendered the amount of the Tagai loan to the Government and to be cultivating the suit land on the Government's behalf. Under the order of forfeiture, the Government and defendant No.7 seem to be in possession of the suit land. The plaintiff seeks to recover possession of the land from them. He can succeed in doing so only if he shows an immediate superior title in himself to the suit land. He claims title to the suit land in virtue of his adoption by defendant No.4 to her deceased husband.

23. I have pointed out above that the Malki Patra Ex. 76 passed by defendant No.4 in favour of defendants Nos. 2 and 3 contains a recital that she was prohibited by her husband from making any adoption.

Relying on that recitals, it is contended for defendant No.1 that defendant No.4 had no power to make any adoption. I have pointed out above that during the minority of defendants Nos. 2 and 3, defendant No.2's husband Honnappa Walikar took the Malki Patra Exh. 76 from defendant No.4 who is an illiterate and ignorant woman. She denies knowledge of the recital contained in the Malki Patra and says that she had never been prohibited by her husband from making an adoption. The burden of proving the prohibition lies on defendant No.1 which alleges it. Except the recital contained in the Malki Patra, there is no evidence whatever in support of the allegation. The recital is not binding on the plaintiff who was not a party to the Malki Patra. Defendant No.4 who passed the Malki Patra says that the recital is false and was inserted therein without her knowledge. To support the recital defendant No.2's husband Honnappa Walikar who took the Malki Patra from defendant No.4 could have been examined on defendant No.1's behalf. But he has not been examined on its behalf in this case. Nor has defendant No.1 led any independent evidence to prove the prohibition. I hold that it is not proved that defendant No.4 was prohibited by her husband from making any adoption.

24. The plaintiff's natural parents belong to Benakanhalli. Defendant No.4 is a resident of Honnutgi. It is the plaintiff's case that defendant No.4 adopted him in the Shiddeshwar Temple at Bijapur on 29-5-1947. He says that about eight or ten days before that date the oral agreement regarding his adoption took place between his natural father Mallappa and his adoptive mother defendant No.4 at Benakanhalli. He also says that on 28-5-1947, he and his natural father Mallappa went from their village Benakanhalli to Bijapur; and that defendant No.4 and witness Virangouda Bagali Exh. 82 also arrived there on

the same day. Witness Virangouda Bagali Exh. 82 is a resident of Kaulgi which is at a mile from Honnutgi, and was the officiating Kulkarni of both the villages. He seems to have accompanied defendant No.4 to Bijapur. They all halted at Jammanavar's Adat shop at Bijapur. On 29-5-1947, in the morning, the plaintiff's adoption ceremony took place in the Shiddeshwar Temple at Bijapur. The plaintiff and defendant No.4 are Kurabars who are Sudras. The only ceremonies essential for an adoption among them are those of giving and taking. The plaintiff says that defendant No.4 requested his natural father Mallappa to give him in adoption to her deceased husband; that Mallappa consented and gave him by the hand to defendant No.4: and that defendant No.4 put a garland round his neck and sugar into his mouth, smelt his crown and announced that he became her adopted son. Defendant No.4 and witness Virangouda Bagali Exh. 82 who attended the adoption ceremony fully corroborate him. After the adoption ceremony, witness Gurupadayya Math Exh. 78 who had attended the ceremony took the photograph Exh. 81. He has produced its negative at Exh. 80. The plaintiff, his natural father Mallappa and defendant No.4 appear in the photograph as if engaged in the act of performing the adoption ceremony. Witness Virangouda Bagali Exh. 82 also appears in the photograph. On the day of the adoption itself, in the afternoon, defendant No.4 executed the adoption deed Exh. 84 in the plaintiff's favour at Bijapur. It is attested by witness Virangouda Bagali Exh. 82 who also identified defendant No.4 before the Sub Registrar at the time of its presentation for registration. The evidence of the plaintiff and his witnesses, the photograph Exh. 81 and the adoption-deed Exh. 84 conclusively prove the adoption made of the plaintiff by defendant No.4 on 29-5-1947.

25. The important question in this case is what right the plaintiff has acquired in the suit land by virtue of his adoption. It was well settled that a son adopted by a Hindu widow acquires an interest in the estate to which his adoptive father was entitled not from the date of his adoption, but his adoption relates back to the date of the death of his adoptive father and he is entitled to claim that estate subject to all lawful alienations effected since the death of the adoptive father and before the date of his adoption. See " Vishnu Pandu v. Mahadu Baburao " (52 Bombay Law Reporter 599). The right of the adopted son to impeach previous alienations depends upon the capacity of the holder who made the alienation as well as on the nature of the alienation. In the case of an alienation made by a widow with restricted rights of transfer, it would be valid only when it is supported by legal necessity. If the alienation was made by the widow without legal necessity, it is valid to the extent only of her interest in the estate up to the date of the adoption. After adoption, the alienee has no power to retain the property as against the adopted son, if there was no legal necessity for the alienation. See Mulla's Hindu Law Sections 507 and 509 at pages 605 and 606.

26. For the gift made of the reversionary interest in the suit land by the Malki Patra Exh. 76 by defendant No.4 in favour of defendants Nos. 2 and 3 there was no consideration and no legal necessity. As I have pointed out above, the gift was not absolutely void but only voidable at the option of the reversioners or the adopted son. The presumptive next reversioners were defendants Nos. 2 and 3 themselves in whose favour the gift was made by the Malki Patra. On their behalf the gift was

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never repudiated. Hence the gift remained valid till the date of the plaintiff's adoption. After his adoption, the gift became voidable at his option. He has exercised his option to avoid the gift. Hence the gift made by the Malki Patra Exh. 76 of the reversionary interest in the suit land in favour of defendants Nos. 2 and 3 is not now binding on the plaintiff. I have pointed out above that as the gift was valid and binding on defendant No.4 at the time when she passed the sale deed Exh. 77 in favour of defendant No.5's father, he got no title to the reversionary interest in the suit land by virtue of the sale deed. Till the plaintiff's adoption the reversionary interest in the suit land vested in defendants Nos. 2 and 3 to whom it had been gifted by the Malki Patra Exh. 76. By virtue of the plaintiff's adoption, defendants Nos. 2 and 3 have been divested of the reversionary interest in the suit land which now vests in him. Hence after defendant No.4's death, the plaintiff is entitled to get possession of the suit land and enjoy it as full owner.

27. Under the Malki Patra Exh. 76 defendant No.4 reserved a life interest in the suit land for herself. I have pointed out above that she had power to alienate that life interest in the suit land for a purpose of legal necessity and that she alienated the same to defendant No.5's father by the sale deed Exh. 77 for such a purpose. The alienation made of defendant No.4's life interest in the suit land in favour of defendant No.5's father by the sale deed Exh. 77 is binding on the plaintiff because it was supported by legal necessity. Defendant No.5 and his father sold defendant No.4's said life interest in the suit land to defendant No.6. That sale is, therefore, binding on the plaintiff

As against the plaintiff, defendant No.6 was entitled to hold the suit land and enjoy its income till the death of defendant No.4.

28. Defendant No.6 borrowed a Tagai loan from Government for the purpose of erecting a Bund on the suit land, and because he failed to repay the loan, the Government made an order in 1945 forfeiting the suit land. The question that arises for determination is whether that order of forfeiture is binding on the plaintiff, and if so, to what extent. I have pointed out above that the order of forfeiture was made under Section 7(1) Clause (c) of the Land Improvement Loans Act which is subject to the proviso that no proceeding thereunder shall affect any interest in the land which existed before the date of the order granting the loan, other than the interest of the borrower. The order granting the loan to defendant No.6 was made in 1938. At that time defendant No.6 was entitled to only defendant No.4's life interest in the suit land, and the reversionary interest vested in defendants Nos. 2 and 3 under the Malki Patra Exh.76. It is, therefore, clear that under the aforesaid proviso to Section 7(1) the order of forfeiture is binding only on defendant No.4's life interest to which defendant No.6 was entitled, and does not affect the reversionary interest which was vesting in defendants Nos. 2 and 3 at the time of the order, but has been since divested from them and vested in the plaintiff.

29. The result of the above findings is that the plaintiff will be entitled to get possession of the suit land from defendants Nos. 1,6 and 7 after defendant No.4's death, but not just now. Having regard to this result, I shall award the plaintiff half the costs of the suit from defendants Nos. 1,6 and 7.

30. ORDER.

It is declared that the alienation made of the

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reverionary interest in the s it land by the Malki Patra Exh. 76 by defendant No.4 in favour of defendants Nos. 2 and 3 is not binding on the plaintiff, and also that the sale made by defendant No.4 in favour of defendant No.5's father by the sale deed Exh. 77 and the subsequent sale made by defendant No.5 and his father in favour of defendant No.6 on 7-6-1935 are not binding on the plaintiff to the extent of the said reversionary interest.

It is also declared that the plaintiff is not liable to satisfy the Tagai loan borrowed by defendant No.6 from defendant No.1 in 1938.

It is further declared that the plaintiff is entitled to the suit land by reversion after defendant No.4's death and that the order of forfeiture made by the District Deputy Collector on 15-7-1945 is not binding on the plaintiff to the extent of his said reversionary interest in the suit land.

The plaintiff to recover possession of the suit land from defendants Nos. 1,6 and 7 after defendant No.4's death.

Defendants Nos. 1,6 and 7 to pay the plaintiff half his costs of the suit. The plaintiff to bear the other half of his costs. All the defendants to bear their costs.

20-1-1953.

Sd. M.M.NADKARNI
CIVIL JUDGE SR.DN.

2/51

Letter.

No.L.A.W.200.
Bijapur, 20-2-1953.

To

The Remembrancer of Legal Affairs,
BOMBAY.

LEGAL DEPARTMENT
23 FEB 1953

Sub : Bijapur C.S. No. 690/50.
Shivaraya Rayappa Devoor.. Plff.
Vs.
The State of Bombay.

The District Govt. Pleader Bijapur in his letter No.211 dated 3-2-1953 (copy enclosed) informsthat the --- decision of the Civil Court should not be appealed against. In view of the opinion of the District Govt. Pleader the -- appeal need not be filed.

O.C. signed
by Collr.

For Collector, Bijapur.

Copy f.w.cs to the District Govt. Pleader, Bijapur for information.

HE SECRETARY TO
LEGAL DEPARTMENT
File No. 4679
24/2/53

119 B+

Copy of letter No. 211 dated 3-2-1953 from the Dist. Govt. Pleader, Bijapur to the Collector, Bijapur.

Sub : Bijapur C.S. No.690/1950.
1. Shivaraya Rayappa Devur Plff.
Vs.
1. The Bombay Province and another... Defts.

"In continuation of my No. 142 dated 20-1-1953 I have the honour to send herewith uncertified copy of Judgment in the above suit.

I have already reported to you under my No. 142 of 1953 that I am of opinion that the decision of the Civil Court should not be appealed against.

The period of limitation for filing an appeal expires on 28-2-1953.
1-2-53.

2. I am sending a copy of this report to Remembrancer of Legal Affairs, Bombay along with an uncertified copy of Judgment.

3. I therefore request you to consider if you should agree with me in my view of an appeal not being preferred. You may kindly forward your report to Remembrancer of Legal Affairs -- very early so that Remembrancer of Legal Affairs may instruct me as to whether I should or should not file an appeal.

4. The certified copy of Judgment and Decree are being -- retained by me so that in case R.L.A. instructs me not to prefer an appeal I will forward the said copies to you for being filed

filed. If however the R.L.A. instructs me to file an ~~fix~~ appeal I will do so and produce the said certified copies in court."

12/133

Suits:
Bijapur.
For a declaration of the invalidity of the various alienations in respect of the suit property and for possession thereof on the strength of the alleged adoption by defendant No.4.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 1081/E
Bombay Castle, 29th April 1953.

Read G.R.L.D. No.11129 dated the 14th July 1951.

Letter from the District Government Pleader, Bijapur, No.143, dated the 20th January 1953, stating that the suit noted in the margin was decided by the Civil Judge Senior Division, Bijapur, on the 20th January 1953 when the following order was passed:-

| | |
|---|---|
| In the Court of the Civil Judge (Senior Division), Bijapur. | |
| Civil Suit No.690 of 1950. | |
| Shivaraya Rayappa Devoor .. Plaintiff. vs. The State of Bombay and 6 others. ... ... Defendants. | |

" It is declared that the alienation made of the reversionary interest in the suit land by the Malki Patra Exh. 76 by defendant No.4 in favour of defendants Nos. 2 and 3 is not binding on the plaintiff, and also that the sale made by defendant No.4 in favour of defendant No.5's father by the sale deed Exh.77 and the subsequent sale made by defendant No.5 and his father in favour of defendant No.6 on 7-6-1935 are not binding on the plaintiff to the extent of the said reversionary interest.

It is also declared that the plaintiff is not liable to satisfy the Tagai loan borrowed by defendant No.6 from defendant No.1 in 1938.

It is further declared that the plaintiff is entitled to the suit land by reversion after defendant No. 4's death and that the order of forfeiture made by the District Deputy Collector on 15-7-1945 is not binding on the plaintiff to the extent of his said reversionary interest in the suit land.

The plaintiff to recover possession of the suit land from defendants Nos. 1, 6 and 7 after defendant No. 4's death.

Defendants Nos. 1, 6 and 7 to pay the plaintiff half his costs of the suit. The plaintiff to bear the other half of his costs. All the defendants to bear their costs."

Letter from the District Government Pleader, Bijapur, No. 212, dated the 3rd February 1953 forwarding uncertified copies...

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copies of the judgment and decree.

RESOLUTION:- The result of the suit is recorded.

By order and in the name of the
Governor of Bombay,

Issued
29/4

original R T Katarki
R.T. Katarki,
Deputy Secretary to Government.

To

The Revenue Department,
The Collector of Bijapur,
The District Government Pleader, Bijapur.

RMS.
29.4.

Submitted for sepration
Thu
29/4
Supdt NB
29.4.53

D.S (Civil)

Submitted after issue
File in S Bij. 2/51.
Thu
30/4
Supdt NB
30.4.53

No. 673 of 1953.
Date:- 9-5-1953.

To

The Collector of Bijapur.

Subject:- Bijapur C.S.No.690/1950.
1. Shivaraya Rayappa Devur
Vs.
1. The Bombay Province
and another.

Sir,

In continuation of this office No.211 of 3-2-1953 I have the honour to forward herewith certified copy of Judgment and Decree in the above suit disposed of on 20-1-1953. An uncertified copy of the Decree is also sent herewith.

Original pape papers in One File received from the R.L.A.Bombay under his No.10584 of 4-7-1950 are sent herewith.

Yours faithfully

Dist.Govt.Pleader,Bijapur.

LEGAL DEPARTMENT
14 MAY 1953

No. 673 of 1953.
Date:- 9-5-1953.

Copy forwarded with compliments to the Remembrancer of Legal Affairs,Bombay, along with an uncertified copy of the Decree.

Dist.Govt.Pleader,Bijapur.

THE ACCOUNTANT TO GOVERNMENT
LEGAL DEPARTMENT
No. 11803
Dt. 15/5/53

4D

Submitted

Memo received & CS

No 690/50 is already recorded

File in S Bij 2/51

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15/5

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ಅಭಿವೃದ್ಧಿಯಾಗಿರುವ ಕೆಲಸ ಮಾಡಿರುವ (ಅ. ಇಂಜಿ

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ಅಂಗಡಿಯವರು ಅಕ್ಕಿಯನ್ನು ಕೊಡಲು ನಿರಾಕರಿಸಿದರು. ಆಗ ಅವರು ಅಂಗಡಿಯವರಿಗೆ ಹೇಳಿದರು.

"ಅಂಗಡಿಯವರೇ ನಾವು ಬಡವರು. ನಮ್ಮ ಬಳಿ ಹಣವಿಲ್ಲ. ಆದರೆ ನಮ್ಮ ಬಳಿ ಒಂದು ಚಿನ್ನದ ಉಂಗುರವಿದೆ. ಅದನ್ನು ನಿಮಗೆ ಕೊಡುತ್ತೇವೆ. ಅದನ್ನು ಇಟ್ಟುಕೊಂಡು ನಮಗೆ ಅಕ್ಕಿಯನ್ನು ಕೊಡಿ. ನಾವು ಹಣ ಕೊಟ್ಟು ಉಂಗುರವನ್ನು ಬಿಡಿಸಿಕೊಂಡು ಹೋಗುತ್ತೇವೆ" ಎಂದರು. ಅಂಗಡಿಯವರು ಒಪ್ಪಿಕೊಂಡರು. ಅವರು ಉಂಗುರವನ್ನು ಕೊಟ್ಟು ಅಕ್ಕಿಯನ್ನು ತೆಗೆದುಕೊಂಡು ಹೋದರು. ಅಂಗಡಿಯವರು ಉಂಗುರವನ್ನು ಒಂದು ಡಬ್ಬಿಯಲ್ಲಿ ಇಟ್ಟರು. ಅವರು ಹಣ ಕೊಟ್ಟು ಉಂಗುರವನ್ನು ಬಿಡಿಸಿಕೊಂಡು ಹೋಗಲಿಲ್ಲ. ಅಂಗಡಿಯವರು ಉಂಗುರವನ್ನು ಮಾರಿ ಹಣ ಮಾಡಿಕೊಂಡರು. ಅ